

Friend, Hudak & Harris, LLP
Attorneys at Law
Three Ravinia Drive | Suite 1700
Atlanta, GA 30346

770.399.9500 | FH2.com
770.395.0000 Facsimile



Writer's email: kwoods@fh2.com

July 13, 2015

VIA OVERNIGHT DELIVERY

Mr. Steve Meradith
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, Nebraska 68508

Re: Application No. NUSF-99

Dear Mr. Meradith:

Enclosed are the original and one (1) copy of the Reply Comments of Charter Fiberlink – Nebraska, LLC in connection with the above-referenced proceedings. Please file these comments in your usual fashion and return one (1) file-stamped copy to us in the enclosed self-addressed envelope.

If you have any questions regarding the foregoing, please contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads 'Kennard B. Woods'.

Kennard B. Woods
Counsel for Charter Fiberlink – Nebraska, LLC

KBW/nh

Enc.

cc: Charter Fiberlink – Nebraska, LLC
Charles A. Hudak, Esq.

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public)	Application No. NUSF-99
Service Commission, on its Own Motion,)	
to Administer the Universal)	REPLY COMMENTS OF CHARTER
Service Fund High-Cost Program)	FIBERLINK - NEBRASKA, LLC

Charter Fiberlink - Nebraska, LLC (“Charter”) submits these Reply Comments to the Nebraska Public Service Commission (the “Commission”) for its consideration in the above-captioned proceeding.

The Commission’s June 16, 2015 *Order Seeking Further Comment and Setting Hearing* (“*Order Seeking Further Comment*”) sets forth several proposals for transitioning the Nebraska Universal Service Fund (“NUSF”) from supporting basic voice services to supporting broadband deployment in high-cost areas. Those proposals include: freezing the amount of high-cost support allocated to price cap carriers at the 2015 calendar year level; setting aside fifty percent (50%) of each price cap carrier’s frozen support for voice service, subject to a demonstration of need for a higher or lower percentage of such support; allowing an “alternative approach” for price cap carriers to demonstrate the appropriate use of funds; establishing a “streamlined process” for price cap carriers to annually present a list of projects for broadband funding; permitting price cap carriers to “coordinate” the use of NUSF support with federal Connect America Fund (“CAF”) support; restricting or eliminating a price cap carrier’s ability to receive NUSF support if the carrier declines to take advantage of CAF Phase II funding; and disallowing broadband support to areas that already have an unsubsidized carrier providing comparable broadband service.

As a threshold matter and as AT&T establishes in its comments,¹ the time is not yet ripe to

¹ Comments of AT&T Corp., Teleport Communications of America, LLC, New Cingular Wireless, LLC d/b/a AT&T Mobility and Cricket Communications, LLC (filed June 30, 2015), pp. 1-6.

transition the high-cost program of the NUSF to broadband support. The CAF Phase II remains in its initial stages and many matters concerning its implementation remain uncertain. As Phase II is implemented over the next two years there will be an opportunity for the Commission to assess its effects on end users and competing providers' broadband services. At this point, however, the effects of the Federal Communications Commission's (the "FCC") reforms on state high-cost programs are not quantifiable with respect to end users and the deployment of broadband service. There is no evidence demonstrating that the CAF program is or will be incapable of targeting areas in need, that federal universal service funding will be insufficient to subsidize price cap ILECs, that the Nebraska Broadband Pilot Program (the "NEBP") and competitive forces will be inadequate to meet demand in Nebraska, or that, to the extent that continuing universal service subsidies are viewed as necessary, the Commission should further subsidize broadband services. A number of parties, including Charter, likewise have counseled restraint throughout this proceeding in transitioning the NUSF.² At the same time, the Commission in a different proceeding (NUSF-100) is determining whether there is a need for changes in the contribution methodology for the NUSF.

Should, however, the Commission determine to transition the NUSF to fund broadband deployment, Charter agrees with the Commission's proposals that recognize the need to encourage and sustain *competitive* broadband markets in Nebraska. Such proposals constitute a step in the right direction since the *Order Opening Docket, Seeking Comment and Setting Hearing* issued on October 15, 2014 in this proceeding.

² See Comments of Charter Fiberlink-Nebraska, LLC (filed Jan. 14, 2015), The Rural Independent Coalition (the "RIC") previously advised the Commission to await further analysis of the FCC's policies before undertaking to revise the NUSF to be complementary to CAF Phase II funding. See Comments of the Rural Independent Companies (filed Jan. 14, 2015), pp. 5-6. CenturyLink, while supporting a complementary state funding mechanism, in January 2015 advised that revising the NUSF at this time would be premature. Comments of Qwest Corporation d/b/a CenturyLink QC and United Telephone Company of the West d/b/a CenturyLink (filed Jan. 14, 2015), pp. 4-6. Frontier in its comments advised against any changes to the NUSF while the FCC is "rolling out" its CAF Phase II program. Comments of Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska (filed Jan. 14, 2015), pp. 2-5.

Consistent with such recognition, and if the Commission were to transition the NUSF to broadband subsidies, Charter agrees with the RIC, NE Colorado Cellular, Inc. d/b/a Viaero Wireless (“Viaero”) and Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel Corp. and NPCR, Inc. (collectively, “Sprint”) that no state broadband support should be awarded to areas in which an unsubsidized carrier is providing comparable broadband service.³ Subsidies should be targeted to those unserved areas that do not present a viable business case for providers to extend broadband facilities. Providing subsidies in those areas where competition exists would distort the competitive market for broadband services, which in turn could create competitive backsliding in the state.

Charter also agrees with the RIC and Sprint that there should be no state broadband subsidies to areas receiving CAF support.⁴ In addition, Charter agrees with Viaero and Sprint that there should be no NUSF support to those price cap carriers declining CAF funding.⁵ The positions of RIC, Viaero and Sprint in such respects are consistent with Charter’s previously stated positions.⁶ NUSF high-cost funding should not provide a mechanism for carriers to try to obtain subsidies under reduced obligations. Price cap carriers that decline CAF funding should not be permitted to increase the burden on the NUSF when federal funding is available. Ultimately, this burden is borne by consumers through higher fees.

To further ensure that the NUSF is used appropriately, before the Commission were to

³ See Comments of the Rural Independent Companies in Response to Order Seeking Further Comments (filed June 30, 2015) (“RIC Comments”), p. 5; Comments of NE Colorado Cellular, Inc. d/b/a Viaero Wireless Pursuant to Commission order Seeking Further Comment and Setting Hearing (filed June 30, 2015) (“Viaero Comments”), p. 1; Further Comments of Sprint Pursuant to Commission Order Setting Further Comment and Setting Hearing (filed June 30, 2015) (“Sprint Comments”), p. 1.

⁴ See RIC Comments, pp. 3-5; Sprint Comments, p. 2.

⁵ See Viaero Comments, pp. 1-2; Sprint Comments, p. 3.

⁶ See Comments of Charter Fiberlink-Nebraska, LLC (filed Jan. 14, 2015) and Reply Comments of Charter Fiberlink-Nebraska, LLC (filed Feb. 9, 2015).

transition the NUSF to broadband support, the Commission should expand on the proposals in the *Order Seeking Further Comment* for the approval process, including for recipients' demonstrations of need and accountability of expenditures. For example, the "alternative approach" for price cap carriers to demonstrate appropriate use of subsidies, the "streamlined process" for price cap carriers to annually present a list of the projects for which broadband funding is sought,⁷ and the "comparability" of broadband services provided by unsubsidized competitors require elaboration. Contrary to the large price cap carriers' suggestions,⁸ the approval process should not be limited to an abbreviated comment period and should not restrict opportunities for participation by other parties.

Charter also disagrees with the large price cap carriers' proposals to foreclose or limit objections from interested parties concerning areas receiving CAF support.⁹ Indeed, as discussed above there should be no overlap in CAF and NUSF broadband funding to such areas in the first place. Permitting such overlap creates unnecessary burdens on consumers through a bloated NUSF. In addition, there should be no overlap of legacy voice and new broadband funding to the same areas, since the same networks being subsidized are used to provide voice and broadband services. As recognized by the FCC, broadband increasingly "is not a discrete, complementary communications service. Instead, it is a platform over which multiple IP-based services—including voice, data and video—converge."¹⁰

⁷ See Sprint Comments, p. 2.

⁸ Initial Comments of Citizens Telecommunications Company of Nebraska, d/b/a Frontier Communications of Nebraska, Qwest Corporation d/b/a CenturyLink QC, United Telephone Company of the West d/b/a CenturyLink, and Windstream Nebraska, Inc. (filed June 30, 2015) ("Price Cap Carriers Comments"), pp. 2-3.

⁹ *Id.* at p. 3.

¹⁰ Federal Communications Commission, Connecting America: The National Broadband Plan (rel. March 16, 2010), Chapter 4.5, p. 59. See *Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663 (2011), *aff'd sub nom, In re FCC 11-161*, 753 F.3d 1015, 2014 WL

Moreover, recipients of broadband funding need to demonstrate use of subsidies for network investment rather than, as the large price cap carriers suggest, using the funds for merely operations and maintenance.¹¹ Providers must adapt their operations to become more efficient to be able to provide the types of advanced networks and advanced services that consumers have come to expect. Permitting funding to be used for operations and maintenance could create a disincentive for providers to operate more efficiently. Ultimately, this could result in poorer service for broadband consumers in areas receiving NUSF support.

Finally, there should be no increase in the total amount of NUSF subsidies as a result of this proceeding. Any proposal that may have the effect of adding to overall high-cost funding must recognize the significant financial burdens already imposed on ratepayers at a time when consumers are already experiencing substantial add-on fees imposed for 911, telecommunications relay service, taxes, and other programs, in addition to federal universal service surcharges.¹²

In summary, the Commission should proceed cautiously with respect to broadband deployment subsidization and the effects of the CAF should be fully understood before the Commission undertakes further steps to subsidize broadband deployment.

Respectfully submitted this 13th day of July, 2015.

By: Kennard B Woods
Charles A. Hudak
Kennard B. Woods
FRIEND, HUDAK & HARRIS, LLP
Three Ravinia Drive, Suite 1700
Atlanta, Georgia 30346
T: 770-399-9500
E: kwoods@fh2.com

2142106 (10th Cir. May 23, 2014), para. 49 (“over time, we expect that voice service will increasingly be provided over broadband networks”).

¹¹ Price Cap Carriers Comments, p. 3.

¹² See Comments of Charter Fiberlink-Nebraska, LLC (filed Jan. 14, 2015), pp. 11-12.

Michael R. Moore
VP and Associate General Counsel, Regulatory Affairs
Charter Communications, Inc.
12405 Powerscourt Drive
St. Louis, Missouri 63131
T: 314-543-2414
E: michael.moore@charter.com

ATTORNEYS FOR CHARTER FIBERLINK -
NEBRASKA, LLC

CERTIFICATE OF SERVICE

The original and one copy of the foregoing Reply Comments of Charter Fiberlink-Nebraska, LLC are being delivered on July 14, 2015 to the Nebraska Public Service Commission, 1200 N Street, Suite 300, Lincoln, Nebraska 68508, and a copy of the same is being e-mailed on the same date to:

Nebraska Public Service Commission
Sue.Vanicek@nebraska.gov
Brandy.Zierott@nebraska.gov

norm.curtright@centurylink.com
jgettman@gettmanmills.com
sdaniel@gettmanmills.com
deonnebruning@neb.rr.com
bdublinkske@fredlaw.com
pschudel@woodsaitken.com
jovercash@woodsaitken.com
lbrooks@brookspanlaw.com
kvogel@brookspanlaw.com
diane.c.browning@sprint.com
matthew.feil@windstream.com
scott.bohler@ftr.com
Jg1989@att.com
eric.preston@viaero.com



Kennard B. Woods