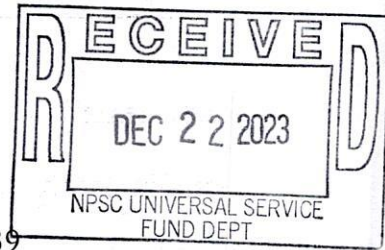


**BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION**



In the Matter of the Nebraska Public)
Service Commission, on its Own Motion,)
to Consider Appropriate)
Modifications to the High-Cost Distribution)
and Reporting Mechanisms in its)
Universal Service Fund Program in)
Light of Federal and State)
Infrastructure Grants)

Application No. NUSF-139

**COMMENTS OF CHARTER FIBERLINK - NEBRASKA, LLC,
AND TIME WARNER CABLE INFORMATION SERVICES (NEBRASKA), LLC
REGARDING SUBPART II.C, ISSUES 3, 4, 5 AND 7**

Charter Fiberlink - Nebraska, LLC ("Charter Fiberlink") and Time Warner Cable Information Services (Nebraska), LLC ("TWCIS") (Charter Fiberlink, TWCIS, and their affiliates are referred to collectively as "Charter") submit these comments in response to issues 3, 4, 5 and 7 raised in Subpart II.C of the Nebraska Public Service Commission's ("Commission") Order Opening Docket, Seeking Comment and Setting Hearing, issued August 29, 2023 (the "Opening Order") and Order Bifurcating Schedule for Comments and Extending Comment Deadline in Part, issued October 12, 2023 ("Bifurcation Order").

I. INTRODUCTION

A. Charter's Background

Charter is a leading broadband connectivity company, serving more than 32 million customers. Under the brand name Spectrum, the company offers a suite of advanced communications services, including broadband Internet access, cable video, voice, and mobile services. Through its subsidiaries, Charter provides these services in 41 states, including to approximately 167,000 customers across 91 communities in Nebraska. Helping to drive the success and growth of Charter's advanced services is the company's strong network investment

which has significantly enhanced its broadband Internet access service and allowed the company to better serve its customers in both urban and rural communities across the United States. From 2018-2022, Charter invested over \$40 billion in infrastructure and technology. During this same period, the company extended its network to reach more than 4.6 million additional homes and small businesses across the country.

In Nebraska, Charter has followed with interest the state's own efforts to invest and support the deployment of broadband infrastructure, and Charter has participated in both the Nebraska Broadband Bridge Program and the Capital Projects Fund ("CPF-1"). In 2022, Charter submitted five applications to the Nebraska Broadband Bridge Program, though ultimately none were approved. In 2023, Charter submitted another application to the Broadband Bridge Program and five applications to the Capital Projects Fund, and its application to serve Lancaster County was approved (412 passings, \$3,183,095 subsidy request, \$4,213,095 total project cost). Broadband deployment is not merely something that is "talked about" by Charter in Nebraska or in any other state. Charter is fully committed to rural broadband deployment and enabling access to reliable broadband service delivered over robust infrastructure throughout its 41-state footprint.

B. Public Support for Rural Broadband Deployment and the Role of the Commission

This docket appropriately asks hard questions about how, whether, and to what extent the Nebraska Universal Service Fund ("NUSF") should support rural broadband deployment. Foundationally, Charter recognizes that achieving broadband availability for all who want it requires public partnerships and support. Private investment alone will not reach every unserved or underserved consumer in the state; public funding is vital. But public funding dollars are limited, and must be assessed and distributed efficiently, effectively, and equitably if the goal of universal broadband is to be achieved. The fact that broadband is important and public funding is

essential to reach every unserved Nebraskan does not mean that it is fair or wise to use money collected from and for intrastate telecommunications services to support broadband investment. The NUSF is a fund supported solely by customers of intrastate telecommunications (*i.e.*, telephone) services – it is not well suited to support broadband investment from a fairness, policy, or legal perspective. Even so, the Commission asks these telephone service customers to bear the burden of developing broadband networks in rural areas of Nebraska. This policy is unsustainable and is patently unfair to those telephone customers.

Accordingly, Charter recommends using NUSF support for the limited purpose of supporting intrastate telecommunications service where that support is needed, aligning the source and object of the NUSF surcharge. Before further departing from this key principle, the Commission must carefully and holistically examine two key questions given the current operation of the NUSF and the changes in public funding for broadband deployment over the past 3-5 years:

- 1. What is the extent of the need for additional public or government support for broadband services in Nebraska?*
- 2. Moving forward, given the millions of dollars allocated from state and federal sources to support Nebraska broadband deployment, is the NUSF the most appropriate and best funding mechanism to meet the need identified in question 1?*

When considering these questions, the Commission should carefully assess the impact of existing federal and state broadband deployment programs on the NUSF's supported services, as well as *all* revenues received and costs incurred by Nebraska NUSF recipients in determining need and funding for any NUSF distributions. The federal Broadband Equity, Access, and Deployment ("BEAD") program, for example, will inject over \$405 million into Nebraska's economy for the purpose of bringing robust high-speed broadband service to every Nebraska resident.¹ This is in

¹https://internetforall.gov/funding-recipients?program_status=0&state=NE&form_build_id=form-G43TJQ0_Q7RwInVyDJTs9wPUPP4CORcVqqX7Dnt9HIk&form_id=ntia_interactive_map_state_and_program_s_election.

addition to the roughly \$80 million in broadband deployment funds from the US Department of Treasury, Coronavirus Capital Projects Fund, and \$20 million annually towards broadband infrastructure deployment from the Nebraska Broadband Bridge Program, both of which the Commission recognized in the Opening Order in this proceeding. In addition, the FCC is now implementing a program investing more than \$18 billion nationwide, including more than \$84 million offered to Nebraska Eligible Telecommunications Carriers (“ETCs”), to deploy 100/20 Mbps speeds through the Enhanced Connect America Cost Model (“Enhanced A-CAM”).² A number of Nebraska rate-of-return rural providers have already accepted Enhanced A-CAM for rural broadband deployment.³ Before continuing to ask Nebraska telephone customers to continue supporting broadband with their surcharge dollars, the Commission must first ensure that all of these other broadband funding sources (and other possible sources that more equitably share the burden of broadband investment among all Nebraska taxpayers) will fail to provide Nebraska consumers with adequate broadband service.

Accordingly, Charter urges the Commission to focus on the following policy priorities when considering any NUSF modifications:

- (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 availability of hundreds of millions of dollars to bring broadband service to every Nebraska resident impacts the need for the continuation of an elevated NUSF surcharge;
- (4) wherever possible, adopt policies that align with other existing broadband infrastructure grant programs and policies at the federal and state levels, to achieve a coordinated and unified broadband policy in Nebraska; and

² See <https://docs.fcc.gov/public/attachments/DA-23-835A1.pdf>

³ See <https://www.fcc.gov/document/wcb-announces-carriers-have-accepted-enhanced-cam-support>.

- (5) while preserving necessary accountability for NUSF funds, limit the reach of Commission regulation over broadband services.

C. Additional Considerations

Because of changes in customer demand for broadband, changes in the service providers offering broadband, and the enormous influx of public funds for broadband, the communications marketplace in Nebraska and elsewhere is experiencing a unique and transformative moment in time. This moment may present the Commission with the single best opportunity over the last two decades to adopt and/or modify its NUSF policies with respect to the communications market in Nebraska, and minimize the burden that Nebraska telephone consumers bear to support rural broadband investment. The Commission should be deliberative and take its time – as it has already shown itself to be doing through this wide-ranging proceeding. The Commission’s priority should be to develop a comprehensive and cohesive NUSF policy that will stand the test of time, rather than committing the program in directions that may not be efficient or needed in light of the transformative nature of the current, unprecedented public investment in rural broadband. There are issues that need to be addressed with respect to the existing limitations of the NUSF, primarily that (a) the NUSF is supported only by customers of intrastate telephone service, and (b) NUSF support is provided and accessible almost exclusively to Incumbent Local Exchange Carriers (“ILECs”) that are ETCs, and not to all broadband providers. Moreover, the Commission does not yet know what need for broadband will remain unfulfilled after the BEAD program, the Broadband Bridge Program, the American Rescue Plan Act programs including the Capital Projects Fund, and Enhanced A-CAM support are fully implemented. The Commission should take the time necessary to properly evaluate the continuing need for the NUSF after the benefits of these state and federal broadband funding programs are realized.

II. COMMENTS

A. Portability of NUSF Support

(Subpart II.C Issue 3 of the Opening Order)

The Commission notes in its Opening Order that, in 1999, it ordered that NUSF support should be portable among ETCs and that it and the FCC later phased out such portability mechanisms. In 2004, the Commission adopted a framework allowing a Competitive Local Exchange Carrier ("CLEC") to file a petition to essentially "replace" the role of an ILEC in order to receive NUSF support in a given area. The Commission states that, to date, no alternative provider has sought such NUSF support and then asks whether it should provide for the portability of high-cost broadband support and for details on the specifics of any such plan.

Charter urges the Commission to abandon any effort to make broadband support portable. As noted in Charter's prior comments, it is unfair to telephone customers and likely unlawful to use NUSF surcharge dollars to fund broadband services. Porting broadband support to competitive providers compounds this problem. Aside from these issues, portability in general is an outdated concept that relies on two traditional regulated telephone market participants – a network owner (usually an ILEC) and a competitor (usually a CLEC purchasing unbundled network elements from the network owner).⁴ The traditional wireline model does not reflect the realities or dynamics of the marketplace for communications, which have changed significantly since the Commission adopted its portability rules. When these portability rules were adopted, facilities-based competition from wireless providers and broadband companies was limited (if it existed at all).

⁴ See Order re *Application No. C-5309, In the Matter of Qwest Corporation dba CenturyLink QC, Overland Park, Kansas, seeking authority to eliminate the Performance Indicatory Definitions and Performance Assurance Plan from its interconnection agreements with Nebraska CLECs* citing CenturyLink's statement that "the PIDS and the PAP have served their purpose." Were the ILEC-CLEC competition taking place today as originally envisioned, CLECs would likely be clamoring to keep the plan in place. Instead, no objection to the proposed modifications was filed by any Nebraska CLEC. Order at p. 2.

Today, wireless phone services are ubiquitously available and have all but replaced wireline telephone services.⁵ Similarly, broadband providers today use multiple methods to provide broadband service: fiber, hybrid fiber, cable, mobile wireless, fixed wireless, and satellite. Few of these private investments in competition have relied upon NUSF portability: Most of these providers are not ETCs, and many broadband providers are not even regulated by the Commission.

Moreover, as the Commission has experienced, portability has not been embraced by the industry. Not one competitive provider has sought ported high-cost support in the 20+ years that portable NUSF support has been available. Simply put, in the broadband context, support does not – and should not – need to be ported from one provider to another. Once a location is served with broadband, regardless of the entity that provides the broadband service, high-cost support for that location should end – for both voice and broadband services.

The Commission next seeks comment on whether it should adopt service quality metrics for broadband performance. As advocated in our earlier comments in this proceeding, Charter does not believe the Commission should adopt service quality metrics for broadband.⁶ Neither high-speed broadband nor Voice over Internet Protocol (“VoIP”) services have been subject to service quality regulation, yet these services perform reliably for Nebraskans and meet and exceed customer connectivity requirements. The Commission has not found a problem to exist with broadband service quality and should, therefore, refrain from considering service quality metrics in the absence of a demonstrated problem. The voice and broadband marketplaces in Nebraska are highly competitive, with numerous providers offering VoIP service, broadband service, and

⁵ Estimates as of the end of 2022 were that nearly 87 percent of adults are either “wireless-only” or “wireless mostly,” and only 1.3 percent of adults and 0.3 percent of children lived in “landline-only” homes. See *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2022*, National Center for Health Statistics, National Health Interview Survey, Released May 5, 2023 (accessible at <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202305.pdf>).

⁶ See Charter November 17, 2023 Comments (“November 17 Comments”) in the instant proceeding, pp. 7 – 8.

wireless service in competition with traditional wireline providers – as well as traditional satellite providers and newer, low-earth orbit satellite providers that offer service with high speeds and minimal lag. Competition ensures quality of service more efficiently than additional regulatory requirements would do.

Lastly, with respect to ongoing NUSF support, Charter again urges the Commission not to adopt a policy of providing ongoing support without a holistic review of the needs of specific providers and the geographic areas and/or locations being served.⁷ In such a review, the Commission should carefully consider the impact of state and federal broadband funding programs as well as all the revenues that rural providers and their affiliates should be expected to receive over their newly built broadband networks, from all services, rather than the outdated and oversimplified examination driven by artificial separations between interstate and intrastate services, and between voice and data communications provided over converged networks. Ongoing support from the NUSF should not be assumed or automatic for any provider.

B. Carrier of Last Resort Obligations and Ensuring Universal Access to Quality Services

(Subpart II.C Issue 4 of the Opening Order)

Charter views the Carrier of Last Resort (“COLR”) concept as anachronistic and unnecessary in today’s competitive broadband marketplace, in which providers compete with one another and offer broadband service using multiple modalities. The COLR concept is a legacy voice-driven obligation and should never be applied to broadband: there is no support in either Nebraska or federal law for imposing a COLR obligation for broadband. Where a location has been deemed “served” with broadband, any COLR obligation with respect to such location should be eliminated. This should occur even in cases where the broadband provider does not directly

⁷ *Id.* at pp. 8 – 9.

provide voice service, because the existence of broadband enables myriad competitive providers of “over-the-top” VoIP services. Indeed, the most recent FCC *Voice Telephone Services* Report indicated that as of June 30, 2022, there were 19,659,000 over-the-top VoIP subscriptions in the US – and overall, interconnected VoIP connections (both over-the-top and otherwise) outnumber traditional switched access lines by more than 2-to-1 (~68,035,000 to ~27,207,000).⁸ The presence of broadband service in a given location should end any existing COLR or ETC obligations for any provider for that location, and any corresponding support associated with such obligations.

At a minimum, regulatory obligations associated with broadband service should be limited to an “opt-in” approach, as the Opening Order suggests – but even those obligations should be a matter of *contract*, not proscriptive *regulation*. That is, providers that take on public support to build broadband networks should be accountable through contract to provide the broadband infrastructure funded by a grant, but those obligations should be constrained and limited to the contracted-for locations and services, consistent with the limitations in NRS § 86-1308(2) for Broadband Bridge Program recipients: (i) offer the funded service for a reasonable period of time following receipt of grant funding, and (ii) maintain minimum speed capabilities over the service commitment period.

Beyond the foregoing, many of the questions posed by the Commission in this section are premature and anticipate the creation of a new regulatory framework for the NUSF before it is known whether broadband funding through other public funding programs has resulted in locations remaining unserved. Charter believes that the Commission should seriously consider ceasing support for broadband services through the NUSF program, or at least placing such funding initiatives on hold and adopt a “wait and see” approach – rather than the Commission adopting

⁸ FCC Office of Economics and Analytics, *Voice Telephone Services: Status as of June 30, 2022*, at 3-5 (August 2023) (accessible at <https://docs.fcc.gov/public/attachments/DOC-396138A1.pdf>)

policies or continuing to fund broadband projects using NUSF surcharge revenue in advance of understanding the continuing need for broadband in Nebraska's rural areas. Once recipients of broadband support have built their networks and begun offering service, broadband shortcomings and/or unserved locations will be more apparent to the Commission. The Commission can then consider whether it needs to take action and whether the NUSF is the best tool available to address any gaps that persist.

Similarly, the Commission should not expand its definition of "supported services" to include broadband services. Rather, as Charter explained in its earlier comments, the Commission should match the source of support to the services that are supported. Because the collection of NUSF surcharges is limited by law to intrastate telecommunications services, the distribution of those surcharges should not support other kinds of services. NUSF funding should be limited to amounts necessary to support telephone service in high-cost rural areas. To be clear, no NUSF recipient should be required to provide broadband services in NUSF-supported locations.

C. Ensuring Affordability and Reasonable Comparability of Service
(Subpart II.C Issue 5 of the Opening Order)

With respect to affordability generally, as discussed in our Phase II comments, broadband affordability is currently supported by the federal Lifeline Program and the Affordable Connectivity Program, as well as the voluntary low cost offerings of many providers, including Charter.⁹ Because these programs currently ensure affordable broadband services for consumers throughout Nebraska, it is not necessary or beneficial at this time for the Commission to ask telephone customers to support additional state-level programs to enhance broadband affordability. Should the federal programs end or be modified in the future, the Commission could revisit this issue, but the source of any funding to make broadband service more affordable should

⁹ *Id.* at pp. 6 – 7.

never be the NUSF surcharge revenue the Commission collects solely from intrastate telecommunications service customers.

The Commission also asks about ensuring that supported services in rural areas are reasonably comparable with services offered in urban areas. Charter's own services are already priced the same across Nebraska and its entire 41-state footprint – and Charter prices its services this way voluntarily, to better serve its customers and more effectively compete in the marketplace, not as a consequence of regulation. Charter customers in Ogallala pay the same for broadband as Charter's customers in Lincoln and the same as Charter's broadband customers in New York City. Charter cautions the Commission against establishing new rules to ensure rural/urban comparability of broadband services and rates – and, instead, to let the marketplace continue to apply competitive pressures on these items. Indeed, even under the Broadband Bridge Program, the Commission is not permitted to “deny an application based on prices or terms and conditions offered, or regulate any term of service.”¹⁰ The Commission should not regulate NUSF recipients' rates more than it is permitted to regulate Broadband Bridge Program recipients' rates.

Most fundamentally, given that this is a proceeding about the NUSF, the Commission must recognize that the NUSF today is supported only by voice telephone customers – on a statewide basis – and that maintaining the NUSF surcharge at its current high level impedes the affordability of these customers' voice telephone service. Expansion of the NUSF under its current funding mechanism – for whatever purpose – would only increase the financial burden on these customers of voice telephone service and make their telephone service even less affordable. At the same time, the Commission must also recognize that its tools are limited. The Commission currently lacks authority to regulate the rates or terms of broadband services. Accordingly, there is no basis

¹⁰ NRS § 86-1311(2).

today for the Commission to consider requirements addressing affordability, comparability, or speed tests for broadband services.

D. Streamlining the Accountability Framework
(Subpart II.C Issue 7 of the Opening Order)

The Commission asks numerous questions about how to make its required reporting more relevant and/or streamlined for a broadband-centric environment, such as how to measure a support recipient's costs/expenses, investments, earnings, accounting practices, and NUSF program spending. As with the Carrier of Last Resort issues discussed in Section B, *supra*, Charter believes it is premature for the Commission to consider new requirements in this area. The Commission should initiate a higher-level review of the services and support needed by Nebraska customers and whether such services and support are satisfied by existing providers and/or by public support programs other than the NUSF – such as BEAD, the Broadband Bridge Program and the American Rescue Plan Act, including the Capital Projects Fund. The Commission's goal should be to have the information necessary to evaluate – on a holistic basis, without using obsolete accounting or jurisdictional separations methods – the continued need for any support that it is providing through the NUSF.

III. Conclusion

Charter appreciates the opportunity to participate in this phase of the proceeding and looks forward to continued active participation.

Dated: December 22, 2023

Charter Fiberlink - Nebraska, LLC and Time Warner
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of December, 2023, the above Comments of Charter Fiberlink – Nebraska, LLC and Time Warner Cable Information Services (Nebraska), LLC Regarding Subpart II.C, Issues 3, 4, 5 and 7 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

Kevin M. Saltzman