

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of	)	
	)	
Joint Application of Charter Fiberlink -	)	
Missouri, LLC and Time Warner Cable	)	File No. TA-2021-0204
Information Services (Missouri), LLC for	)	
Designation as Eligible Telecommunications	)	
Carriers to Receive Rural Digital Opportunity	)	
Fund Auction (Auction 904) Support for	)	
Voice and Broadband Services	)	
	)	

**SECOND SUPPLEMENT TO JOINT APPLICATION**

Charter Fiberlink - Missouri, LLC and Time Warner Cable Information Services (Missouri), LLC (each individually, a “Charter Entity,” and collectively, the “Charter Entities”)<sup>1</sup> hereby file this Second Supplement to their Joint Application submitted to the Missouri Public Service Commission (the “Commission”) on January 6, 2021.<sup>2</sup>

**SUMMARY**

Charter, through its affiliates, currently provides modern high-speed broadband, video, mobile, and voice services to over 855,000 customers in the State of Missouri.<sup>3</sup> With support from the FCC’s Rural Digital Opportunity Fund (“RDOF”), Charter will soon bring modern high-speed

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<sup>1</sup> Charter Fiberlink – Missouri, LLC and Time Warner Cable Information Services (Missouri), LLC are wholly owned subsidiaries of Charter Communications, Inc. In this Supplement, these Charter entities are referred to collectively as “Charter.”

<sup>2</sup> See Joint Application of Charter Fiberlink – Missouri, LLC and Time Warner Cable Information Services (Missouri), LLC for Designation as Eligible Telecommunications Carriers to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services, filed January 6, 2021 (the “Application”).

<sup>3</sup> Certain of the subjects and benefits discussed in this Second Supplement pertain to non-jurisdictional products and services. While those items are voluntarily included herein in order to provide a comprehensive view of the public interest benefits of designating the Charter Entities as ETCs, Charter respectfully reserves all rights relating to the inclusion of or reference to such information, including without limitation Charter’s legal and equitable rights relating to jurisdiction, filing, disclosure, relevancy, due process, review, and appeal.

broadband Internet service to almost 61,524 locations<sup>4</sup> (spread over more than 8,406 mostly rural census blocks) in Missouri that currently lack these services. Charter will offer its voice and broadband offerings in these areas subject to the RDOF program rules and other applicable laws, as well as Charter's own service terms and policies. To support this expansion of its network, Charter expects to receive more than \$48 million in RDOF funding. Before it can complete this RDOF-supported expansion, however, the Charter Entities are required to obtain ETC designation from the state for the portions of the census blocks where Charter receives RDOF support.<sup>5</sup> To that end, the Charter Entities filed their Application for ETC designation in the above-styled proceeding on January 6, 2021.

In order to assist the Commission in its evaluation of the Application, the Charter Entities hereby supplement the Application, as follows:

(i) Charter announced on March 4, 2021 plans to make a private investment of approximately \$200 million in the eligible portions of the RDOF Census Blocks assigned to the Charter Entities in Missouri.

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<sup>4</sup> The FCC defines "locations" as "housing units" and "small businesses" that receive "consumer-grade broadband service." See *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, Public Notice, WC Docket No. 10-90, DA 16-1363 (2016).

<sup>5</sup> The Charter Entities seek ETC designation only in those full census blocks or *portions* of census blocks that are eligible for RDOF support. See *Wireline Competition Bureau and Office of Economics and Analytics Release Updated List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, DA 20-665 (June 25, 2020), at p. 6 (stating "As the Commission made clear in the *Rural Digital Opportunity Fund Order*, eligible areas would include census blocks served by both price cap carriers and rate-of-return carriers *to the extent that the census block is in the price cap carrier's territory. That is, only the price cap portion of the census block is eligible.*") (emphasis added). Throughout this Second Supplement, Charter's use of the phrase "RDOF Census Blocks" should be understood to refer to full census blocks or *portions* of census blocks, where applicable.

Additionally, Exhibits A and B to the Charter Entities' Application provide lists of the RDOF Census Blocks assigned by the FCC to CCO Holdings, LLC in Missouri. To the extent the FCC modifies the lists of RDOF Census Blocks on those Exhibits or there is any inconsistency between the lists of RDOF Census Blocks on those Exhibits and the list at the FCC's RDOF Dashboard (<https://auctiondata.fcc.gov/public/projects/auction904>), the list at the FCC's RDOF Dashboard shall control with respect to where each respective Charter Entity will have ETC obligations. In addition, to the extent the FCC modifies the census block award, such modified census blocks shall constitute the RDOF Census Blocks for purposes of the ETC designation.

(ii) Charter has become aware that it is possible that census blocks which are currently included in the RDOF Census Blocks may cease to be eligible for RDOF funding if they become eligible for other state or federal programs that are also designed to support the deployment of broadband infrastructure. In light of this fact, Charter respectfully requests that the Commission do two things: (1) recognize that key aspects of the FCC’s RDOF program, including assigned census blocks, locations, and service deployment milestones, are subject to change, and (2) incorporate in any ETC designation Order a mechanism to conform or ‘true up’ to subsequent RDOF program modifications conferred by the FCC.

(iii) Charter wishes to supplement the Application to provide details about two enforcement matters within the last ten years potentially subject to the enumerated list of items in 20 CSR 4240-31.016(2)(B)(4).

These items are discussed more fully below.

**I. Charter announced a \$248 million initiative to expand broadband availability to unserved Missouri homes and small businesses.**

Charter announced on March 4, 2021 that, as part of its RDOF effort to deliver gigabit high-speed broadband to approximately 61,000 unserved Missouri homes and small businesses (as estimated by the FCC), it plans to invest more than \$248 million in Missouri.<sup>6</sup> This amount includes an expected private investment of at least \$200 million by Charter and more than \$48 million in support won by Charter in the FCC’s RDOF auction. This new initiative is in addition to Charter’s existing network expansion plans and builds upon Charter’s long track record of expanding broadband access to unserved and underserved locations nationally. Charter’s

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<sup>6</sup> See “A \$248 Million Initiative to Expand Broadband Availability to Unserved Missouri Homes and Small Businesses,” available at <https://policy.charter.com/RDOF-Missouri-Initiative>.

investment in expanding broadband access in Missouri will be an important step in increasing consumer access to digital technologies and positioning Missouri for future growth.

**II. Incorporating future FCC changes to census blocks, location counts, and service deployment milestones will ensure certainty for RDOF award recipients as they buildout their networks and ensure the most efficient use of scarce resources.**

In its *RDOF Order*, the FCC acknowledged the need for updated broadband deployment data for the service areas receiving support under the RDOF program, and such data – once analyzed – likely will affect the census blocks, location counts, and service deployment milestones impacting the buildout of an RDOF participant’s network infrastructure.<sup>7</sup> So that Charter may react quickly and efficiently to any changes implemented by the FCC to these critical buildout requirements, Charter requests that any Commission Order granting its ETC designation expressly recognize that these key aspects of the FCC’s RDOF program are subject to certain limited changes. Additionally, to the extent that the FCC makes any such changes in the future, Charter requests that any ETC designation Order include a mechanism to incorporate these FCC modifications.<sup>8</sup> Since Charter only intends to build and seek ETC status in the eligible portions of the RDOF Census Blocks where it was awarded locations and is entitled to receive support, if the FCC changes those census blocks there would be no Charter facilities present. Without the

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<sup>7</sup> See *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 690-94, paras. 45-55 (Jan. 30, 2020) (“*RDOF Order*”).

<sup>8</sup> See Application, Exhibit A at FN 1 and Exhibit B at FN 1.

presence of facilities or a network in a given census block, Charter would not plan to provide service and therefore no ETC designation would be necessary or required.

***A. There may be subsidized competitors that already serve, or have received funding to serve, an RDOF award recipient's census blocks.***

For RDOF, the FCC determined that support would be available only for specific eligible census blocks that were wholly unserved with broadband at speeds of at least 25/3 Mbps.<sup>9</sup> The FCC directed its staff to identify these unserved census blocks, compile an initial list, and conduct a challenge process.<sup>10</sup> The FCC's staff consulted with the U.S. Department of Agriculture's Rural Utility Service ("RUS") to exclude the portions of any census blocks that substantially overlapped with the RUS' ReConnect Program,<sup>11</sup> and the staff conducted a census block challenge process to eliminate from auction eligibility any census blocks that are already served. In October 2020, the FCC's staff issued its final list of eligible census blocks, which was largely based on 2019 data.<sup>12</sup>

Since the creation of RDOF, however, other potential sources of federal and state funding have become available to expand broadband to rural and unserved areas. An example is the 2020 federal CARES Act, which, as part of stimulus relief in the aftermath of the COVID-19 pandemic, disbursed funding to the states during the 2020 calendar year for broadband infrastructure investment and required buildout of facilities by December 31, 2020. While these CARES Act funds were not distributed directly from the federal government to broadband providers,

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<sup>9</sup> *RDOF Order* at para. 12.

<sup>10</sup> *Id.* at paras. 12-14.

<sup>11</sup> *Id.* at para. 13 and FN 31.

<sup>12</sup> See *Wireline Competition Bureau and Office of Economics and Analytics Announce Release Final List and Map of Eligible Areas for the RDOF Phase I Auction*, 35 FCC Rcd 11283 (Oct. 8, 2020) ("*Auction 904 Final List*").

allocations of CARES Act money to the states was used by them to fund broadband deployment, including in Missouri.<sup>13</sup>

In addition to federal funding, many states, such as Missouri,<sup>14</sup> have created their own state-funded broadband programs and may have awarded funds to census blocks that were part of the FCC's list of unserved census blocks compiled based on 2019 data. In some cases, these more recent federal and state efforts supporting broadband deployment overlap with RDOF assigned census blocks, including ones assigned to Charter.

Since it filed its Application in this proceeding, Charter has become aware that, in some states, including Missouri, existing service providers are already serving and/or receiving broadband subsidies under federal or state programs to serve Charter's RDOF Census Blocks. (This is an issue facing many RDOF winners, not just Charter.) These areas were ineligible for RDOF support under the FCC's rules, which expressly excluded the following categories of census blocks: (1) census blocks where a CAF Phase II Auction winning bidder must deploy broadband; (2) census blocks where a Rural Broadband Experiment support recipient must deploy broadband; (3) census blocks where a terrestrial provider offers both voice and broadband of 25/3 Mbps according to the most recent publicly available Form 477 data; (4) census blocks awarded funding through the RUS ReConnect Program; and (5) census blocks awarded funding through other similar federal or state broadband subsidy programs to provide at least 25/3 Mbps service.<sup>15</sup> Accordingly, to the extent the FCC modifies its RDOF-awarded census blocks as a result of the presence of an existing competitor, and/or a census block is ultimately excluded based on the list

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<sup>13</sup> See Press Release "Governor Parson directs nearly \$50 million in relief funds to aid in broadband expansion and COVID-19 response" (July 2, 2020), available at: [ded.mo.gov/content/governor-parson-directs-nearly-50-million-relief-funds-aid-broadband-expansion-and-covid-19](https://ded.mo.gov/content/governor-parson-directs-nearly-50-million-relief-funds-aid-broadband-expansion-and-covid-19).

<sup>14</sup> See *Missouri Broadband Grant Program*, Missouri Department of Economic Development, available at: [ded.mo.gov/content/missouri-broadband-grant-program](https://ded.mo.gov/content/missouri-broadband-grant-program).

<sup>15</sup> *RDOF Order* at paras. 12-13.

above, Charter's buildout requirements could change. If those changes occur, Charter would want to make such corresponding changes to its ETC designation, which tracks the census blocks awarded to it by the FCC.

***B. The FCC's location counts within census blocks are likely to change.***

Given its reliance on model data, the FCC also expects the location counts within its RDOF-awarded census blocks to change. Specifically, to develop its RDOF location counts, the FCC used the same location counts that it used for its Connect America Cost-Model ("CAM") – which is based on census data collected in 2011.<sup>16</sup> Awardees must provide updated location counts to the FCC by the sixth year of the RDOF program. FCC staff, no later than the end of year six, must publish revised location counts.<sup>17</sup> Awardees will be required to offer service to the number of locations identified in this subsequent release,<sup>18</sup> and RDOF support amounts will be reduced in the case of substantially fewer locations within an RDOF census block.

***C. The FCC's service milestones may be extended in the case of a greater number of locations in a census block.***

Next, the FCC has been clear that its service deployment milestones are "interim."<sup>19</sup> Awardees are required to commercially offer service to 40% of the CAM-calculated number of locations in the state by the end of the third full calendar year after funding authorization, and 20% each year thereafter.<sup>20</sup> Recognizing that location counts could change significantly, the FCC will allow carriers whose location counts increase by 35% within census blocks to complete 100% deployment by year eight (two additional years).<sup>21</sup> While Charter intends to initiate service on a

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<sup>16</sup> *RDOF Order* at para. 47.

<sup>17</sup> *Id.* at para. 45.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at para. 49.

rolling basis as it deploys network facilities,<sup>22</sup> it also wishes to inform the Commission that the FCC's service deployment milestones may be extended where service providers must build to substantially more locations.

***D. The Commission can serve the public interest by adopting a mechanism to incorporate future changes to the RDOF Census Blocks to the area of Charter's ETC designation.***

Through the RDOF program, Charter will construct new high-speed broadband networks in rural areas of Missouri where there would otherwise be no such networks. Missouri customers will benefit from Charter's efforts by being able to receive Charter's broadband services. Charter's efforts, however, could get delayed or derailed if, over time, the area of Charter's ETC designation does not remain consistent with the census blocks eligible for RDOF support. Maintaining consistency would be administratively efficient for both the Commission and Charter. For example, if the Commission's Order does not account for the FCC's future changes, Charter will have to seek a discontinuance of service and a relinquishment of its ETC status each time the FCC removes a census block from RDOF eligibility. This will impose unnecessary administrative burdens on the Commission and on Charter.

Incorporating the FCC's changes will result in no potential harm to the Commission or consumers, as the FCC will be the final arbiter of any changes affecting the supported census blocks or locations. Because such an incorporation mechanism will create efficiency, avoid delays and provide business certainty for RDOF participants, the Commission's adoption of such a mechanism would serve the public interest.

Charter's Application for ETC designation relies on the RDOF Census Blocks and location counts and is contingent upon census blocks remaining eligible for RDOF funding. As discussed

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<sup>22</sup> All Charter services are provided in accordance with applicable law and consistent with Charter's terms of service and other policies.



above, the FCC may remove a given census block from eligibility for RDOF funding. For this reason, Charter asks that any Order granting ETC designation expressly recognize that its ETC-designated service area is subject to reduction if the FCC removes any census blocks from RDOF eligibility. To that end, Charter asks that the Commission include language substantively similar to the following in Charter's Order granting ETC designation:

Charter is designated as an ETC in the eligible portions of the census blocks shown in Appendix [X] where it receives RDOF support. If the FCC removes any such census block from eligibility for RDOF support, that census block will be removed from Charter's ETC-designated service area automatically and without further action by the Commission.

**III. Charter supplements its prior response under 20 CSR 4240-31.016(2)(B)(4) to provide details about two potentially applicable enforcement matters.**

The Charter Entities wish to supplement the Application to provide details about two potentially applicable enforcement matters under 20 CSR 4240-31.016(2)(B)(4). The events leading to both actions involved the operations of Time Warner Cable, Inc. ("TWC"), and both actions were commenced before Charter's 2016 merger with TWC. Both claims were settled with the respective agencies. These two matters are as follows:

(i) On October 23, 2015, prior to Charter's merger with TWC, the New York Office of the Attorney General (the "NY AG") began an investigation of TWC's advertised Internet speeds and other Internet product advertising. Other companies were also investigated. On February 1, 2017, following the merger of Charter and TWC, the NY AG filed suit in the Supreme Court (i.e., trial level) for the State of New York alleging that TWC's advertising of Internet speeds was false and misleading. The case settled in December 2018 without an admission of liability by Charter. The resolution included, among other things, a credit refund to customers and ceasing certain TWC marketing practices.

(ii) In September 2013, also prior to Charter's merger with TWC, the FCC began an investigation regarding TWC's failure to timely file certain reportable wireline and VoIP network outages in accordance with the FCC's network outage reporting requirements. Although TWC had timely submitted notifications to the FCC about the reportable outages, it failed to file several initial and/or final reports about these events. TWC settled with the FCC in 2014, agreeing to terms that included a civil penalty and three years of reporting pursuant to a compliance plan.

### CONCLUSION

Charter respectfully requests that the Commission grant the ETC designations to the Charter Entities for the respective RDOF census blocks identified in their Application subject to the FCC's release of any future-modified census block, locations, and/or service deployment milestones, as described herein.

Respectfully submitted,

Charter Fiberlink - Missouri, LLC and Time  
Warner Cable Information Services  
(Missouri), LLC

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 18th day of March, 2021, to all counsel of record.

/s/ Mark P. Johnson

Mark P. Johnson