

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 approximately \$11.6 million in RDOF funding.⁴ Before it can complete this RDOF-supported expansion, however, Charter Fiberlink is required to obtain ETC designation from the state for the census blocks and portions of the census blocks where Charter receives RDOF support (the "RDOF Census Blocks").⁵ To that end, Charter Fiberlink filed its Application for ETC designation in the above-styled proceeding.

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

(i) Charter requests that the Commission incorporate, in any ETC designation Order, a mechanism to automatically conform (or 'true up') the list of census blocks in which Charter Fiberlink is designated as an ETC to reflect any future changes to Charter's RDOF Census Blocks

⁴ See *Winning Bidder Summary, FCC Rural Digital Fund Phase I Auction, Auction ID: 904*, dated Dec. 7, 2020, available at: <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>. Once authorized to receive funding, Charter Fiberlink will be the entity receiving support payments and the entity that will meet the RDOF public interest obligations in Washington.

⁵ Charter Fiberlink seeks ETC designation in full census blocks where the full census block is eligible for RDOF support; in cases where a census block is only partially eligible for RDOF support, Charter Fiberlink seeks ETC designation only as to the supported portion. The vast majority, but not all, census blocks included in the RDOF auction were included in full. 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 Response, 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, Exhibit B to the Application provides a list of the RDOF Census Blocks assigned by the FCC to CCO Holdings, LLC in Washington. To the extent there is any inconsistency between the list of RDOF Census Blocks on that Exhibit 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 Charter Fiberlink is seeking ETC designation and accordingly will have ETC obligations. In addition, in the event the FCC were to modify the census block award in the future, such as in response to a waiver petition or otherwise, any such modified census blocks shall constitute the RDOF Census Blocks for purposes of the ETC designation.

and/or deployment areas.

(ii) Charter responds to an additional question propounded by the Commission's Staff relating to the Application and withdraws its request for a waiver of the Commission's two-year investment plan requirement.

These items are discussed more fully below.

I. Incorporating any future changes to census blocks, location counts, and service deployment milestones that RDOF recipients must serve will ensure certainty for RDOF award recipients as they buildout their networks and ensure the most efficient use of existing 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 – may affect the census blocks, location counts, and service deployment milestones impacting the buildout of an RDOF participant's network infrastructure.⁶ 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 ETC designation to Charter Fiberlink expressly recognize that these key aspects of the FCC's RDOF program may be subject to certain limited changes. Additionally, to the extent that Charter's RDOF deployment areas are otherwise modified in the future, Charter requests that any ETC designation Order include a mechanism to incorporate these modifications.

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

⁶ 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*").

census blocks that were wholly unserved with broadband at speeds of at least 25/3 Mbps.⁷ The FCC directed its staff to identify these unserved census blocks, compile an initial list, and conduct a challenge process.⁸ 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,⁹ 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.¹⁰

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, allocations of CARES Act money to the states was used by some states to fund broadband deployment.

In addition to federal funding, many states have created their own state-funded broadband programs, like Washington, 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/or state efforts supporting broadband deployment overlap with RDOF assigned

⁷ *RDOF Order* at para. 12.

⁸ *Id.* at paras. 12-14.

⁹ *Id.* at para. 13 and FN 31.

¹⁰ 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").

census blocks, including ones assigned to Charter.

Since it filed its Application in this proceeding, Charter has become aware that, in some states, 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.¹¹

To the extent that Charter Fiberlink's RDOF Census Blocks are modified for any of these reasons or otherwise, Charter's buildout requirements could change. If those changes occur, Charter Fiberlink's ETC designation should correspondingly reflect the census blocks in which Charter is actually receiving RDOF support and is subject to an RDOF deployment obligation.

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 2011.¹² Awardees must provide updated location counts

¹¹ *RDOF Order* at paras. 12-13.

¹² *RDOF Order* at para. 47.

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.¹³ Awardees will be required to offer service to the number of locations identified in this subsequent release,¹⁴ 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.”¹⁵ 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.¹⁶ 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),¹⁷ and require deployment at the end of the sixth year only to reach the original estimated locations. While Charter intends to initiate service on a rolling basis as it deploys network facilities,¹⁸ 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

¹³ *Id.* at para. 45.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at para. 49.

¹⁸ All Charter services are provided in accordance with applicable law and consistent with Charter’s terms of service and other policies.

in rural areas of Washington where there would otherwise be no such networks. Washington 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 Fiberlink's ETC designation does not remain consistent with the census blocks in which Charter is actually receiving 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 future changes, Charter Fiberlink will have to seek a discontinuance of service and a relinquishment of its ETC status each time the census blocks in which it receives RDOF support change. This will impose unnecessary administrative burdens on the Commission and Charter. As a result, Charter would not be able to focus as easily on its mission of delivering high-quality services to Washington residents, even when it is clear from the outset that Charter seeks ETC designation only in the census blocks where it deploys service and receives grant awards pursuant to RDOF.

Incorporating future changes to the RDOF Census Blocks will result in no potential harm to the Commission or consumers. 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 Fiberlink's Application for ETC designation relies on the RDOF Census Blocks and location counts and is contingent upon Charter's receipt of RDOF funding in those census blocks. For this reason, Charter asks that any Order granting ETC designation expressly provide a mechanism to automatically conform the ETC designation so that it reflects only the census blocks where Charter is actually receiving RDOF support and therefore subject to an RDOF

deployment obligation, by including in the Order language substantively similar to the following:

Charter Fiberlink is designated as an ETC in the eligible portions of the census blocks shown in Appendix [X] where it was assigned a winning bid in the RDOF auction. If Charter Fiberlink does not receive RDOF support in any such census block or portion thereof, then Charter Fiberlink will file notice in this case of such change to the census block or portion thereof and such census block or portion thereof will be removed from Charter Fiberlink’s ETC-designated service area automatically and without further action by the Commission.¹⁹

II. Responses to Commission Telecommunications Staff’s Questions

Charter Fiberlink responds to the Commission Telecommunications Staff’s questions, as follows.

A. **RDOF FCC Long Form Application.** Charter Fiberlink hereby provides **Confidential Exhibits E through H** to supplement the Application with confidentially relevant portions from its Phase I and Phase II FCC RDOF Long Form Application (Form 683) for Washington. Specifically, the Confidential Exhibits provide the following information:

<u>Confidential Exhibit E</u>	Project Plan
<u>Confidential Exhibit F</u>	Project Funding Information
<u>Confidential Exhibit G</u>	Indirect Ownership Exhibit and Initial Project Overview
<u>Confidential Exhibit H</u>	Technology and System Design Description

These documents are confidential and extremely competitively sensitive and, therefore, Charter Fiberlink is providing them confidentially pursuant to WAC 480-07-160.

¹⁹ Other state regulatory commissions have similarly adopted mechanisms to ensure that Charter’s ETC designation conforms to those service areas designated for RDOF support by the FCC. See *Joint Application of Charter Fiberlink-Missouri, LLC and Time Warner Cable Information Systems (Missouri) LLC for Designation as ETCs*, File No. TA-2021-0204, Order, Mo. PSC (iss. Apr. 7, 2021) (ordering that “[i]f the FCC removes any such census block from eligibility for RDOF support then the Company or Companies will file into this case file a copy of the FCC documentation removing the census block. Such a filing will cause the census block to be removed from the indicated company’s ETC designated service area automatically and without further action by the Commission.”).

B. Two-Year Investment Plan. In the Application, Charter Fiberlink requested a waiver of the requirement to submit a two-year plan of its RDOF-related investments in Washington.²⁰ **Confidential Exhibits E through H** submitted herewith provide the information and/or data required in the two-year plan of network investments. Therefore, Charter Fiberlink hereby withdraws its request for a waiver of this requirement.

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²⁰Application at pp. 16 – 18.

CONCLUSION

Charter Fiberlink respectfully requests that the Commission supplement the Application as discussed herein, grant Charter Fiberlink ETC designation in the RDOF Census Blocks identified in its Application, and incorporate in its ETC designation Order a mechanism to conform or “true up” to any subsequent modifications to Charter Fiberlink’s RDOF obligations.

Respectfully submitted,

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Dated: May 3, 2021

LIST OF EXHIBITS

Exhibit E – Project Plan (**Confidential**)

Exhibit F – Project Funding Information (**Confidential**)

Exhibit G – Indirect Ownership Exhibit and Initial Project Overview (**Confidential**)

Exhibit H – Technology and System Design Description (**Confidential**)