

**BEFORE THE
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of)	Docket No. 2021-00005
)	
Application of Time Warner Cable)	
Information Services (Kentucky), LLC for)	
Designation as an Eligible)	
Telecommunications Carrier to Receive Rural)	
Digital Opportunity Fund Auction (Auction)	
904) Support for Voice and Broadband)	
Services)	

SUPPLEMENT TO APPLICATION

Time Warner Cable Information Services (Kentucky), LLC (“TWCIS”) hereby files this Supplement to its Application submitted to the Kentucky Public Service Commission (“Commission”) on January 6, 2021.¹

SUMMARY

Charter Communications, Inc. (“Charter”) provides modern high-speed broadband, video, mobile, and voice services to more than 741,000 customers in the State of Kentucky.² Charter provides these services through its Kentucky affiliates, which include TWCIS. With support from the FCC’s Rural Digital Opportunity Fund (“RDOF”), Charter will soon bring modern high-speed broadband Internet service to 31,747 locations³ (spread over 3,232 mostly rural census blocks) in

¹ See Application of Time Warner Cable Information Services (Kentucky), LLC for Designation as an Eligible Telecommunications Carrier in Specified Areas to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services and Request for Expedited Review, filed January 6, 2021 (the “Application”).

² Certain of the subjects and benefits discussed in this 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 TWCIS as an eligible telecommunications carrier (“ETC”), TWCIS respectfully reserves all rights relating to the inclusion of or reference to such information, including without limitation TWCIS’s legal and equitable rights relating to jurisdiction, filing, disclosure, relevancy, due process, review, and appeal.

³ 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).

Kentucky 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 over \$58 million in RDOF funding.⁴ Before it can complete this RDOF-supported expansion, however, TWCIS 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, TWCIS filed its Application for ETC designation in the above-styled proceeding.

Since it filed its Application, however, TWCIS has discovered that certain census blocks in Kentucky (and other states) were included in the RDOF Auction despite the fact that they are already served by a broadband provider, which ought to have disqualified these census blocks from inclusion in the RDOF program. TWCIS and Charter have recently filed a petition with the FCC seeking a partial waiver of its obligation to apply for support in the census blocks that are already

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, TWCIS will be the entity receiving support payments and the entity that will meet the RDOF public interest obligations in Kentucky.

⁵ TWCIS 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, TWCIS 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 6 ("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 A to the Application provides a list of the RDOF Census Blocks assigned by the FCC to CCO Holdings, LLC in Kentucky. 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 TWCIS 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.

served, including the already-served census blocks in Kentucky.⁶ As we discuss further below, it is possible that Charter and TWCIS will discover other census blocks that ought to be removed from those that were awarded to TWCIS, for the same or similar reasons. Charter and TWCIS anticipate that the FCC may modify the final list of RDOF Census Blocks for these reasons. Similarly, the FCC may modify location counts and service deployment milestones.

The Commission should maintain consistency between any state ETC requirements and the census blocks, location counts, and service deployment milestones for which RDOF recipients, such as TWCIS, must serve and/or comply. Ensuring consistency among these RDOF program requirements and Kentucky's own ETC requirements will ensure certainty for RDOF award recipients as they build-out their networks, as well as ensure the most efficient use of an RDOF recipient's existing resources. Accordingly, TWCIS hereby requests that the Commission incorporate, in any ETC designation Order, a mechanism to conform (or 'true up') the list of census blocks in which TWCIS is designated as an ETC to reflect any future changes to Charter's RDOF Census Blocks and/or deployment areas. This request is discussed more fully below.

DISCUSSION

- A. Charter has identified Kentucky census blocks that should not have been included in the RDOF program and has asked the FCC to remove them from the RDOF 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.⁷ In particular, the FCC excluded from eligibility: (1) census blocks where a CAF Phase II Auction winning bidder must deploy broadband; (2) census blocks where a Rural Broadband Experiment

⁶ *In the Matter of Rural Digital Opportunity Fund*, Petition for Waiver, FCC WC Docket No. 19-126 (May 11, 2021) ("Waiver Petition")(available at <https://www.fcc.gov/ecfs/filing/10511434226946>).

⁷ *RDOF Order* at para. 12.

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.⁸

The FCC directed its staff to identify these unserved census blocks, compile an initial list, and conduct a challenge process.⁹ 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's ReConnect Program,¹⁰ 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.¹¹ Through the RDOF Auction process, the FCC awarded providers support to serve eligible census blocks. Through its affiliates, Charter was named the winning provider for 31,747 locations (spread over 3,232 mostly rural census blocks) in Kentucky.

In its *RDOF Order*, the FCC acknowledged that its data regarding broadband deployment in the areas receiving support under the RDOF program would need to be updated. It also recognized that these updates could affect location counts and service deployment milestones applicable to a given RDOF participant's census blocks.¹² As a result of the data used by the FCC, it was inevitable that the RDOF Auction would include some census blocks that were already

⁸ *RDOF Order* at paras. 12-13.

⁹ *Id.* at paras. 12-14.

¹⁰ *Id.* at para. 13 and n. 31.

¹¹ 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)(available at <https://bit.ly/3tKnSJU>).

¹² 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*").

served by an existing broadband provider at the time of the Auction and therefore should have been excluded.

Since completing the RDOF Auction, Charter has begun reviewing its RDOF-awarded census blocks on a nationwide basis,¹³ and it has already identified certain areas in several states where a provider already serves, or will serve, a particular RDOF-awarded census block with high-speed broadband Internet access services.

In particular, Charter has identified five Census Block Groups in Kentucky that were included in the RDOF auction—and which Charter ultimately won—but that are contained entirely within the service area of Bardstown Connect (formerly Bardstown Cable TV & Internet), a local municipal provider that serves Bardstown, Kentucky and the surrounding regions.¹⁴ Bardstown Connect advertises broadband internet access services through its cable network with speeds up to 200 Mbps throughout its service area, and residential fiber internet service with speeds of up to 1 Gbps within select areas.¹⁵ Charter does not know how these areas came to be included in the RDOF auction; regardless, the areas are already served and not in need of federal broadband support.

Because these areas should not have been included in the RDOF Auction, Charter has filed a Petition for Waiver with the FCC, seeking a limited waiver of its RDOF application and deployment obligations in these areas.¹⁶ In short, Charter is seeking to have these census blocks removed from its final list of RDOF Census Blocks because they are already served and therefore

¹³ As of the date of this Supplement, Charter has reviewed approximately 1,000 census block groups (“CBGs”) out of the total 5,366 CBGs for which a Charter entity was a winning bidder.

¹⁴ See Coverage Area, Bardstown Connect <https://www.bardstownconnect.com/#coverage> (last visited May 9, 2021).

¹⁵ See Residential Internet Packages, Bardstown Connect, <https://www.bardstownconnect.com/high-speed-internet/for-home/internet-packages/> (last visited May 9, 2021).

¹⁶ *In the Matter of Rural Digital Opportunity Fund*, Petition for Waiver, FCC WC Docket No. 19-126 (May 11, 2021) (“Waiver Petition”) (available at <https://www.fcc.gov/ecfs/filing/10511434226946>).

never should have been included in the RDOF Auction to begin with.

Charter's Waiver Petition is currently pending before the FCC. If the FCC grants the Waiver Petition (either in whole or in part), that action may remove certain census blocks (or portions of census blocks) from Charter's RDOF Census Blocks in Kentucky. If they are removed from Charter's RDOF Census Blocks, they should likewise be removed from TWCIS's ETC designated area.

B. There may be other census blocks that should be removed from the RDOF program because they are already receiving non-RDOF support.

Since the creation of RDOF, other potential sources of federal and state funding have become available to expand broadband to rural and unserved areas. One example is the 2020 federal CARES Act. Under the CARES Act, Congress disbursed funds, both directly and indirectly through the states, to support the expansion of broadband infrastructure. Kentucky is among the states that has received federal CARES Acts money to support access to broadband.¹⁷ (Although Kentucky has used CARES Act money to support broadband adoption, to date it has not used CARES Act funds to support broadband infrastructure deployment.)

In addition to federal funding, many states have also 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.¹⁸ Although it is not currently the case in Kentucky, in some other cases, these more recent federal and/or state efforts supporting broadband deployment overlap with RDOF assigned census blocks, including ones assigned to

¹⁷ "The Governor noted that the budget proposal he recently offered up before the General Assembly contains \$50 million dedicated to the last mile of broadband to areas in need. . . . This announcement comes after the Beshear-Coleman Administration first dedicated \$8 million in CARES Act funding to broadband expansion in August 2020." Press Release, "Kentucky Launches Free Statewide Wi-Fi Speed Test to Better Connect People to School, Business and Government Services (Jan. 18, 2021)(available at <https://bit.ly/3tKnhle>).

¹⁸ In Kentucky, Governor Beshear recently signed a bill that will provide a minimum of \$600 million toward broadband expansion. See Press Release, "Gov. Beshear: Bipartisan Agreement on Rescue Plan to Create More than 14,500 Jobs in Kentucky" (Apr. 7, 2021)(available at <https://bit.ly/3y8HAT4>).

Charter.

As described in Charter's FCC Waiver Petition, Charter has become aware that, in a number of states, existing service providers are already serving and/or receiving broadband subsidies under federal or state programs to serve areas designated for RDOF support. (This is an issue facing many RDOF winners, not just Charter). As such, these areas should not have been eligible for RDOF support under the FCC's rules.¹⁹

As a result of these overlaps and the presence of existing broadband providers, Charter has sought relief from the FCC to avoid an inefficient and ineffective use of RDOF funds to overbuild census blocks in which a large majority of the estimated locations either already have, or are expected to soon receive, broadband Internet access service. If the FCC grants Charter's Waiver Petition, Charter expects that the list of RDOF Census Blocks will be modified to remove census blocks (or portions of census blocks) that should not receive RDOF support. Further, it is possible that there will be other changes to the RDOF Census Blocks under the RDOF program. If any such changes to the RDOF Census Blocks are made, TWCIS's ETC designation should change to track the census blocks in which Charter is actually receiving RDOF support and is subject to an RDOF deployment obligation.

C. 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 2011.²⁰ 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,

¹⁹ *RDOF Order* at paras. 12-13.

²⁰ *RDOF Order* at para. 47.

must publish revised location counts.²¹ Awardees will be required to offer service to the number of locations identified in this subsequent release,²² and RDOF support amounts will be reduced in the case of substantially fewer locations within an RDOF census block.

D. 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.”²³ 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.²⁴ 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),²⁵ 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,²⁶ 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.

E. 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 Kentucky where there would otherwise be no such networks. Kentucky customers will benefit from Charter’s efforts by being able to receive Charter’s broadband services.

²¹ *Id.* at para. 45.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at para. 49.

²⁶ All Charter services are provided in accordance with applicable law and consistent with Charter’s terms of service and other policies.

Charter's efforts, however, could get delayed or derailed if, over time, the area of TWCIS'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, TWCIS 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 Kentucky 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.

TWCIS'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 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:

TWCIS 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 TWCIS does not receive RDOF support in any such census block or portion thereof, then TWCIS 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 TWCIS's ETC-designated service area without further action by the Commission.²⁷

CONCLUSION

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 build out their networks and ensure the most efficient use of existing resources. For these reasons, TWCIS respectfully requests that the Commission supplement the Application as discussed herein, grant TWCIS 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 TWCIS's RDOF obligations.

²⁷ 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, e.g., 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 Apr. 7, 2021)(available at <https://bit.ly/3bjUHHh>) (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.”); *In the Matter of Designation of Carriers Eligible for Universal Service Support*, Order Designating Charter Fiberlink NC-CCO, LLC and Time Warner Cable Information Services (North Carolina), LLC as Eligible Telecommunications Carriers, Docket No. P-100, Sub 133C (N.C.U.C. May 5, 2021)(available at <https://bit.ly/3w2d3nT>)(concluding that “if the FCC removes or alters the census blocks awarded to the Charter Entities, the affected company must notify the Commission by filing in this docket a copy of the FCC's order, and the affected census blocks will automatically be revised or removed from the indicated company's ETC-designated service area without further action by the Commission.”).

Respectfully submitted,

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