Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
Connect America Fund	)	WC Docket No. 10-90

PETITION FOR CLARIFICATION OR, IN THE ALTERNATIVE, RECONSIDERATION

Heartland Telecommunications Company of Iowa d/b/a Premier Communications ("Premier") hereby submits a petition for clarification or, in the alternative, reconsideration of one discrete aspect of the Federal Communications Commission's ("FCC") recent decision in the above-captioned docket to establish the Rural Digital Opportunity Fund (RDOF).[1]

The FCC's recently adopted Rural Digital Opportunity Fund is a significant step in the FCC's ongoing efforts to close the digital divide and ensure that all rural homes, farms and small businesses have access to high-speed broadband networks. We applaud the FCC for recognizing the need to ensure that networks built with universal service support "will stand the test of time" and for implementing a framework that "prioritizes faster broadband speeds of up to a gigabit per second."[2] Indeed, the wisdom of that approach is evident today in the midst of the current COVID-19 pandemic, with increased demands being placed on broadband networks across the

[1] *Rural Digital Opportunity Fund et al*., Report and Order, WC Docket No. 19-126 et al., FCC 20-5 (rel. Feb. 7, 2020) (*RDOF Order*).
[2] *Id*. at paras. 2, 4.

country. Now, more than ever, it is clear that all Americans need robust broadband to be able to learn, work, and obtain healthcare remotely.

We seek clarification that the FCC has not definitively resolved the question of what areas will be included in the RDOF Phase II auction, nor has it foreclosed the possibility of providing some form of ongoing support to high-cost price cap areas that currently receive Connect America Fund (CAF) Phase II model-based support where broadband service meeting the FCC's performance standards is available, but unsustainable without universal service support.[3]

In the alternative, if the FCC has determined that only high-cost price cap areas lacking 25/3 Mbps will be eligible for RDOF Phase II, we seek reconsideration of that decision. We believe it is too early to adopt a final decision on what areas should be eligible for Phase II.

Premier's interest in this matter stems from its unique position as a recipient of CAF Phase II model-based support. In 2016, Premier acquired certain properties in Iowa from Consolidated Communications. The prior year, Consolidated had accepted the FCC's offer of CAF Phase II model-based support for a period of six years and agreed to make available to the requisite number of locations broadband meeting the Commission's then-current standard of 10/1 Mbps for recipients of high-cost support with fixed broadband performance obligations. Under the framework adopted by the FCC in the 2011 *USF/Transformation Order*,[4] model-based support was made available to Consolidated and the other price cap carriers, whether or not they

[3] For purposes of this discussion, we use the term "price cap areas" to refer to areas that are currently receiving CAF Phase II model-based support, regardless of whether the incumbent service provider is a price cap carrier, or – like Premier – a company that acquired properties from a price cap carrier.

[4] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd sub nom*., *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

already had deployed 10/1 Mbps broadband networks or were already offering 10/1 Mbps fixed broadband service.

As the purchaser of these properties, Premier assumed the CAF Phase II performance obligations, and the corresponding support. After evaluating the state of the existing network, and the relative costs of different types of deployment to meet the CAF Phase II obligations, Premier decided to deploy a fiber network, concluding that technology would be the lower cost solution to meeting the needs of its customers over the longer term.

We realized when we acquired these properties that the Phase II support was scheduled to end in 2020, and the FCC had previously indicated in the 2011 *USF/ICC Transformation Order* that support would be distributed through a market-based mechanism, such as competitive bidding, in the future. We fully expected, however, to be able to compete for support at the end of the CAF Phase II term.

I. THE COMMISSION SHOULD CLARIFY THAT IT HAS NOT FINALIZED WHICH AREAS WILL BE ELIGIBLE FOR THE RDOF PHASE II AUCTION

Building on the knowledge gained from the Connect America Fund Phase II auction, the FCC plans to award $20.4 billion in funding through a multi-round, reverse, descending clock auction. The FCC has concluded that it will allocate funding in two stages, Phase I and Phase II.

There is language in the *RDOF Order* explaining which areas will be eligible for the Phase I auction, and which areas will be included in the Phase II auction. Specifically, the FCC explains in an introductory paragraph in the discussion section that “Phase I will target those areas that current data confirm are wholly unserved; and, Phase II will target unserved locations within areas that data demonstrates are only partially served, as well as any areas not won in Phase II.”[5] The FCC repeats that language in the first paragraph of the section entitled “Areas

[5] *RDOF Order* at para. 5.

Eligible for the Phase I and Phase II Auctions," with that paragraph concluding with the following sentence: "Because we will have an additional opportunity to seek comment on how best to target Phase II support as we gather more granular data on where broadband has been actually deployed, we focus here on the areas eligible for Phase I of the auction."[6]

The FCC directed the Wireline Competition Bureau to prepare a preliminary list of eligible areas for the Phase I auction, outlining with specificity seven categories of census blocks that would be included in that auction. It also specified which census blocks would be excluded from the Phase I auction. The FCC excluded those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service according to the most recent publicly available FCC Form 477 data. In footnote 30, it referred to the definition of unsubsidized competitor previously adopted in the 2011 *USF/ICC Transformation Order*,[7] and explained that determinations of whether a broadband provider is offering voice are made using FCC Form 477 subscription data. The footnote then concludes, "For purposes of determining areas eligible for the Phase I auction, a price cap carrier currently receiving model-based support or legacy support will be considered an unsubsidized competitor."

We assume, based on the language in paragraph 9 indicating that the FCC will seek further comment before finalizing the areas eligible for RDOF Phase II, that the FCC's brief discussion of what areas would be eligible in Phase II was not intended to be exhaustive. We seek clarification that the FCC has not adopted a final decision regarding all of the attributes of areas that will be eligible for the RDOF Phase II auction, but merely has identified one category of areas that will be eligible – the unserved portions of partially served census blocks, once data

[6] *Id*. at para. 9.
[7] *Id*. at para. 13.

is available enabling the FCC to make that determination – while leaving open the question of whether additional areas should be eligible.

Moreover, we read the last sentence of footnote 30 quoted above as deciding only for purposes of the Phase I auction that incumbent providers would be treated as unsubsidized competitors, and not resolving the question of whether incumbents would be similarly treated as unsubsidized competitors in the Phase II auction. We seek clarification that the FCC has not foreclosed the possibility that high-cost areas served with 25/3 Mbps broadband could be included in the Phase II auction.

We recognize that the FCC has made a policy decision for the time being to prioritize new high-cost funding programs towards unserved areas. But over the longer term, it cannot ignore the statutory mandate in section 254 is both to preserve and advance universal service. A decision to foreclose altogether support in high-cost price cap areas that become served with broadband would be a dramatic departure from long-standing FCC precedent and, we respectfully suggest, inconsistent with the law. Moreover, we believe a decision to foreclose support for areas that exceed the current baseline standard for universal service creates a significant disincentive for service providers to deploy robust, scalable networks – which the FCC has repeatedly recognized as a critical goal.[8]

As noted above, in the 2011 *USF/ICC Transformation Order*, the FCC decided to make an offer of model-based support to the price cap companies in high-cost areas, excluding areas served by unsubsidized competitors – specifically, a "facilities-based provider of residential

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[8] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17703, para. 107; *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15655-56, para. 29 (2014) (encouraging parties receiving 10 years of support through the Phase II competitive bidding process to deploy futureproof networks that are capable of meeting future demand); *see also Connect America Fund et al*., Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, para. 26 (2017) (recognizing higher speed service will meet the evolving needs of consumers).

terrestrial fixed voice and broadband service that does not receive high-cost support."[9] When that decision was finally implemented in 2015, CAF Phase II model-based support was offered to price cap carriers regardless of whether they had already deployed 10/1 Mbps service in their high-cost areas.

Similarly, in the context of decisions made regarding support programs for rate-of-return carriers, the FCC has expressly recognized the need for ongoing support in high-cost areas where broadband has already been deployed. When the FCC initially established a voluntary model-based support program for rate-of-return carriers in 2016, using the Alternative Connect America Cost Model (A-CAM) to calculate support, it provided A-CAM funding to carriers that already exceeded the then-current broadband standard of 10/1 Mbps using technologies other than fiber or cable. The FCC chose not to calculate support for census blocks where the rate-of-return had deployed broadband using fiber or cable facilities only to effectuate its policy preference to prioritize model-based support for unserved areas. It reasoned that election of A-CAM support was optional, and companies that had deployed fiber would be able to continue to receive support under the legacy mechanisms.[10] The FCC recognized "these deployed census blocks require ongoing funding both to maintain existing service and in some cases to repay loans incurred to complete network deployments."[11] It continued, "Our decision to exclude from support calculations this subset of census blocks in no way indicates a belief that once networks are deployed, they no longer require support."[12]

[9] 47 C.F.R. §54.5 (definition of unsubsidized competitor).
[10] *Connect America Fund et al*., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, para. 56 (2016).
[11] *Id*.
[12] *Id*.

More recently, in 2018, the FCC concluded it would not exclude fiber and cable-served high-cost areas from A-CAM eligibility when making a second offer of A-CAM support to companies that did not previously elect to receive A-CAM support. It noted, "The Commission has previously recognized that areas with partially or fully-deployed fiber-to-the-premises may still require high-cost support to maintain existing service."[13] A-CAM II support therefore is provided to areas that already have broadband meeting or exceeding the FCC's standards, regardless of technology. In short, when updating its high-cost programs for rate-of-return carriers, the FCC has recognized a need to provide ongoing support for high-cost areas that are already served.

The FCC made clear in the 2011 *USF/ICC Transformation Order* that it expected broadband performance obligations would evolve, and it urged carriers to build "robust, scalable networks."[14] Our nation's broadband future will not be well served if carriers make a business decision to upgrade their infrastructure with high-cost support to barely meet the minimum build-out obligation, in order to maximize their opportunity to participate in future funding programs. It is critical that the FCC's policy framework not create disincentives for carriers to exceed current minimum broadband performance obligations.

For more than two decades, the FCC has recognized that universal service support is necessary to defray not only the cost of building infrastructure capable of delivering the desired services, but also the cost of ongoing expenditures to provide universal service. It is critical that consumers across the country continue to receive voice and broadband service at rates that are reasonably comparable to rates for similar services in urban areas. Premier believes it important

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[13] *Connect America Fund et al*., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11907, para. 45 (2018).
[14] *USF/ICC Transformation Order*, 26 FCC Rcd at 17703, para. 107.

for there to be a future opportunity for public comment on how to ensure that universal service is preserved in high-cost price cap areas that have broadband today.

II. IN THE ALTERNATIVE, THE FCC SHOULD RECONSIDER ITS DECISION THAT FUNDING FOR THE RDOF PHASE II AUCTION WILL BE AVAILABLE ONLY IN AREAS LACKING 25/3 MBPS BROADBAND SERVICE

In the event the FCC decided that RDOF Phase II support will only be made available in high-cost price cap areas lacking voice and 25/3 Mbps broadband from any provider, Premier seeks reconsideration of that decision. Premier respectfully suggests that it would be premature to decide now, for an auction that may not occur for several years,[15] the specific areas that should be eligible for that future, yet-to-be scheduled Phase II auction. That decision is better made closer to the time of the Phase II auction, taking into account any lessons learned from the outcome of the RDOF Phase I auction, the progress to date of companies authorized to receive CAF Phase II auction support, and marketplace developments.

The FCC has long recognized the statutory mandate that universal service is an evolving standard. The FCC committed in the 2011 *USF/ICC Transformation Order* to periodically revisiting its standard for universal service, and indeed the actions taken since that time show the wisdom of that approach. When the FCC originally adopted the 2011 *USF/ICC Transformation Order*, it set 4/1 Mbps as the standard for recipients of support with a fixed broadband performance obligation; subsequently, in late 2014, it increased the standard to 10/1 Mbps; and now, in 2020, the FCC has established 25/3 Mbps as the baseline standard for the new Rural

[15] The FCC has decided to conduct the RDOF Phase II auction after collecting more granular information regarding broadband availability. It is not clear how long it will take the FCC to gather such information through the new Digital Opportunity Data Collection, or alternative data sources. Chairman Pai issued a statement after the Broadband Deployment Accuracy and Technological Availability (Broadband DATA) Act was signed into law, urging Congress to appropriate funding for broadband mapping. *See* Statement of Chairman Ajit Pai (rel. Mar. 24, 2020) ("At this point, it is vital for Congress to provide the FCC as soon as possible with the appropriations necessary to implement the Act. Right now, the FCC does not have the funding to carry out the Act, as we have warned for some time.")

Digital Opportunity Fund. It is simply too early to decide what the minimum performance requirements should be for an auction several years down the road and what performance standard should be used to determine which areas are eligible for that auction.

III. CONCLUSION

For the foregoing reasons, Premier requests clarification or, in the alternative, reconsideration of this one aspect of the FCC's decision in the recent *RDOF Order*.

Respectfully submitted,

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