



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE FOR RDOF AND CAF PHASE II SUPPORT RECIPIENTS ON PROCEDURES FOR PROVIDER DEFAULTS TO ENSURE THAT BROADBAND NETWORKS ARE DEPLOYED TO ALL CONSUMERS

AU Docket No. 20-34
AU Docket No. 17-182
WC Docket No. 19-126
WC Docket No. 10-90

With this Public Notice, the Wireline Competition Bureau (WCB or Bureau) provides guidance to Rural Digital Opportunity Fund (RDOF) and Connect America Fund (CAF) Phase II support recipients and other stakeholders regarding the processes for provider defaults.¹ Support recipients are showing significant progress in meeting their deployment milestones, as noted below, and there is no demonstrated need for widespread relief from the RDOF and CAF Phase II default penalties. Given the flexibility available under the existing default processes and other Commission rules and the lack of demonstrated need for broad relief, as well as our strong interest in preserving the integrity of the Commission's broadband deployment programs, we decline to provide a blanket amnesty.

However, we recognize that certain carriers may not be able to meet their broadband deployment obligations² or have experienced changed circumstances that may impact their deployment. To ensure that high-speed broadband is deployed across the country, close coordination between the Commission's high-cost programs and other federal broadband deployment programs is critically important. In recent months, the Bureau has quickly responded to default requests for these high-cost programs, has approved transfers of deployment obligations to other carriers which avoids support payment recovery and default penalties, and has waived Commission rules where warranted to reduce support payment recovery and default penalties. The Bureau also has the ability, where good cause exists based on individual circumstances, to waive other non-compliance rules for defaults in these high-cost programs.

¹ This Public Notice builds on previously issued guidance regarding engagement with states and Tribal governments. *See Wireline Competition Bureau Provides Guidance to High-Cost Support Recipients Regarding Engagement with States and Tribal Governments to Determine Eligibility of Locations for the BEAD Program and to Avoid Duplicative Funding*, WC Docket No. 10-90 et al., Public Notice, DA 23-1115 (WCB Nov. 29, 2023).

² *See Letter Seeking RDOF and CAF II Amnesty from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, and Civil Society Organizations from Gigi Sohn, Executive Director, American Association for Public Broadband, to Jessica Rosenworcel, Chairwoman*, WC Docket No. 19-126 et al. (filed Feb. 28, 2024) (Entity Letter) (requesting broad amnesty from default penalties for RDOF and CAF Phase II participants to encourage early defaults).

To ensure federal deployment funds reach the locations where they are needed, we strongly encourage carriers contemplating defaulting on their deployment obligations under the Commission’s competitively bid high-cost programs to reach out to the Bureau, and to the relevant state or territory broadband offices or Tribal governments, about their situation as soon as possible. Earlier defaults can limit the support recovery and penalty costs to the carrier and also ensure that states and territories timely receive the necessary information for their Broadband Equity, Access, and Deployment (BEAD) planning. Earlier defaults also ensure that our sister federal agencies timely receive this information to target funding for their broadband deployment programs.³

Background

The Commission’s high-cost programs are designed to support broadband deployment in rural, insular, and high-cost areas. To promote universal access to high-speed broadband in these areas, the Commission’s rules for RDOF and CAF Phase II give carriers an incentive to fulfill their deployment obligations and a disincentive to “cherry pick” only the least expensive locations for service. The Commission adopted support recovery mechanisms for authorized RDOF and CAF Phase II recipients that provide a strong financial incentive for carriers to fulfill their buildout obligations in full as quickly as possible. Commission rules also permit support recipients to transfer their deployment obligations to other carriers, and a few CAF Phase II and RDOF support recipients have successfully transferred USF public interest obligations, ensuring that these locations receive service while also allowing the original carrier to avoid support recovery and default penalties.⁴ Under sections 54.320(d) and 54.806(c)(1) of the Commission’s rules,⁵ RDOF and CAF Phase II support recipients are subject to interim service milestones by which they must serve a defined number of locations across all of the eligible census blocks in each state.⁶ If a support recipient does not meet an interim service milestone, the support recipient is subject to the non-compliance measures associated with the relevant non-compliance tiers that scale with the size of the compliance gap, and which include reporting, the withholding of an increasing percentage of support, support recovery, and drawing on the support recipient’s letter of credit if it cannot pay back the relevant support by the applicable deadline.⁷

At the end of the deployment period, if the support recipient has not served the required number of locations after an opportunity to cure, we will recover support provided to the recipient for all defaulted locations on an average support per location basis across census block groups (CBGs) in the support recipient’s service area in a state.⁸ We also will recover average support received for the unserved locations multiplied by a factor to reflect that the areas being defaulted on are likely some of the higher cost areas in the support recipient’s service area, plus, in most circumstances, an additional percentage of

³ Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, § 904, 134 Stat. 1182, 3214 (codified at 47 U.S.C. § 1308 *et seq.*) (BICA) (requiring the Federal Communications Commission, the Department of Agriculture, and the National Telecommunications and Information Administration to “enter into an interagency agreement requiring coordination between the covered agencies for the distribution of funds for broadband deployment . . .”).

⁴ 47 U.S.C. § 214(a), 47 CFR §§ 63.03-04. *See, e.g., Domestic Section 214 Application Granted For The Acquisition Of Certain Assets Of BroadLife Communications, Inc. by Yellowhammer Networks, LLC*, Public Notice, 38 FCC Rcd 5078, 5081 (WCB 2023); *Domestic Section 214 Application Granted for the Transfer of Control of Certain Authorizations of Point Broadband Fiber Holding, LLC to R.M. Greene, Inc. AKA Beam*, WC Docket No. 22-344, Public Notice, DA 23-537 (WCB June 21, 2023).

⁵ 47 CFR §§ 54.320(d)(1) & (2), 54.806(c)(1).

⁶ 47 CFR §§ 54.310(c), 54.802(c)(1).

⁷ 47 CFR §§ 54.320(d)(1), 54.804(c)4, 54.806(c).

⁸ 47 CFR §§ 54.320(d)(2), 54.806(c)(1).

support that the Commission imposed to discourage non-compliance.⁹ Support is recovered sooner for support recipients in Tier 4 of the non-compliance tiers that have failed to serve more than 50% of the required number of locations after having 50% of their support withheld for six months.¹⁰

On February 28, 2024, a wide-ranging group of stakeholders filed a letter with the Commission seeking broad “RDOF and CAF II Amnesty.”¹¹ These entities assert that because of the onset of new federal broadband deployment programs, particularly the BEAD program, and increases in costs from post-COVID-19 pandemic inflation and labor shortages, RDOF and CAF II support recipients should be allowed to default early on their public interest obligations with greatly reduced or eliminated penalties.¹² The entities argued that “lowering the penalties for default will incentivize awardees to relinquish their areas sooner rather than later, making the areas eligible for BEAD funding.”¹³ The Bureau sought comment on the Entity Letter, and comments were due on March 26, 2024, with reply comments due on April 9, 2024.¹⁴

Discussion

There is no demonstrated need for broad relief from the RDOF and CAF II default penalties. RDOF and CAF Phase II support recipients have shown significant progress toward meeting deployment obligations, with only 4% of CAF Phase II carriers reporting not timely meeting buildout milestones, and with 71% of RDOF carriers reporting locations served a full year prior to the first deployment milestones required by the program.¹⁵ Nevertheless, situations may arise where a carrier seeks to default on its deployment obligations.

⁹ 47 CFR § 54.320(d)(2), 54.806(c). For the final 100% service milestone, if a CAF Phase II support recipient fails to serve at least 95% of its required number of locations, the Commission requires that we recover “an amount of support that is equal to 1.89 times the average amount of support per location received in the state over the six-year period for the relevant number of locations the ETC has failed to offer service to, plus 10 percent of the ETC’s total Phase II support received in the state over the six-year period for deployment.” 47 CFR § 54.320(d)(2); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6017, para. 191 (2016) (*CAF Phase II Auction Order*). If a CAF Phase II support recipient serves at least 95% of its total number of required locations but less than 100%, it will be required to return support for the unserved locations that is equal to the average support per location in the state times 1.89. 47 CFR § 54.310(c)(2). For the RDOF support recipient’s sixth year 100% service milestone, the amount of support recovery scales with the size of the non-compliance gap. 47 CFR § 54.806(c)(1)(i)(A)-(C). If the support recipient has deployed to 95% or more of its required locations but less than 100%, we must recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state over the support term for the unserved locations. If the support recipient has deployed to 90% or more of its required locations but less than 95%, we must recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state over the support term for the unserved locations, plus 5% of total authorized support. If the carrier has deployed to fewer than 90% of its required locations, we must recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state over the support term for the unserved locations, plus 10% of total authorized support. *Id.*

¹⁰ 47 CFR § 54.320(d)(1)(iv)(B) (requiring the Bureau to recover a percentage of support that is equal to the support recipient’s compliance gap plus 10% of the ETC’s support that has been disbursed to that date).

¹¹ See Entity Letter.

¹² *Id.*

¹³ Entity Letter at 2.

¹⁴ See Request for Comment on Letter From 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organizations, AU Docket No. 20-34 et al., Public Notice, DA 24-202 (WCB Mar. 5, 2024).

¹⁵ The first RDOF buildout milestone for carriers authorized in 2021 is 40% of locations by December 31, 2024, and for those authorized in 2022, the 40% milestone is December 31, 2025.

The Commission's existing processes allow for early defaults in the CAF Phase II and RDOF programs,¹⁶ and in recent defaults the Bureau has waived certain rules to reduce the support recovery amount and penalties associated with defaulting. The Bureau also has the ability to waive other non-compliance rules based on individual circumstances, as well as other RDOF and CAF II requirements, where good cause is shown. For these reasons, broad amnesty from the RDOF and CAF Phase II support recovery and penalty rules, as requested in the Entity Letter, is not warranted. Individual providers contemplating a default should contact the Bureau, as well as the relevant state or territory broadband offices and Tribal governments, as soon as possible to discuss their specific situation.

The following examples illustrate the Commission's existing processes and the Bureau's actions, in conjunction with other agencies and/or carriers, to work with providers that defaulted on their RDOF or CAF Phase II deployment obligations in whole or in part and to provide flexibility with respect to certain RDOF and CAF II requirements, including waiving certain rules to reduce support recoveries and default penalties:

- The Commission coordinates regularly with state broadband offices, Tribal representatives, and relevant federal agencies concerning potential and actual defaults. We also encourage carriers to work closely with these entities concerning any potential defaults.¹⁷ As soon as a carrier notifies us that it will not serve certain identified winning bid census block groups, we notify other federal agencies and the relevant state broadband office that the eligible census blocks within those areas are no longer subject to an enforceable commitment to deploy qualifying broadband, making the locations eligible for funding from other federal and state funding programs.¹⁸ In addition, we remove these census blocks from the support recipients' service areas on the Broadband Funding Map.¹⁹

¹⁶ *Wireline Competition Bureau Announces Certain RDOF and CAF Phase II Auction Census Block Groups are Eligible for Other Funding Programs*, AU Docket No. 20-34 et al., Public Notice, DA 24-181 (WCB Feb. 28, 2024) (*Feb. 2024 Post-Authorization Default Public Notice*); *Wireline Competition Bureau Announces Certain RDOF and CAF Phase II Auction Census Block Groups are Eligible for Other Funding Programs*, AU Docket No. 20-34 et al., Public Notice, DA 24-357 (WCB Apr. 15, 2024) (*Apr. 2024 Post-Authorization Default Public Notice*); *Wireline Competition Bureau Announces Certain RDOF Census Block Groups are Eligible for Other Funding Programs*, AU Docket No. 20-34 et al., Public Notice, DA 24-449 (WCB May 10, 2024) (*May 2024 Post-Authorization Default Public Notice*).

¹⁷ See, e.g., *Wireline Competition Bureau Provides Guidance to High-Cost Support Recipients Regarding Engagement with States and Tribal Governments to Determine Eligibility of Locations for the BEAD Program and to Avoid Duplicative Funding*, WC Docket No. 10-90 et al., Public Notice, DA 23-1115 (WCB Nov. 29, 2023) (providing guidance on how carriers should engage directly with state broadband offices by "participating in BEAD Program challenge processes and otherwise provide information requested by the states in furtherance of the BEAD Program.").

¹⁸ See, e.g., Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity at 36-37 & n.52 (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (BEAD Program NOFO) (explaining that any location that is already subject to an enforceable commitment for the deployment of qualifying broadband cannot be treated as unserved or underserved); Department of Commerce, National Telecommunications and Information Administration, Tribal Broadband Connectivity Program Round 2 Notice of Funding Opportunity at 10-11, 28 (July 27, 2023), <https://www.ntia.gov/sites/default/files/2023-07/ntia-tbcp-round2-nofo.pdf> ("A Tribal Government may not certify Tribal Lands covered under an Enforceable Buildout Commitment as defined [in the NOFO] . . . , as Unserved"); Department of Agriculture, Rural Utilities Service, Corrected Notice of Funding Opportunity for the Community Connect Grant Program for Fiscal Year 2023, 88 Fed. Reg. 87750, 87751 (Dec. 19, 2023) ("Areas receiving, or areas that have received final approval for, other federal funding to construct terrestrial facilities providing at least 10/1 Mbps service in the project Proposed Funded Service Area as of the date of this notice, and which have been reported to the agency, are ineligible."); Department of Agriculture, Rural Utilities Service, Rural eConnectivity (ReConnect) Program Notice of Funding Opportunity, 89 Fed. Reg. 13035, 13036

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- The Bureau and the Commission’s Office of Native Affairs and Policy have been working collaboratively with NTIA, high-cost support recipients, and Tribal governments to facilitate engagement between high-cost support recipients and Tribal governments concerning build-out plans, and also to maximize the use of federal broadband funding for Tribal lands.
- We waived pre-authorization default forfeitures for certain RDOF long-form applicants that agreed to default on some of their winning bids when another federal agency had planned to fund a different service provider’s deployment in the relevant area after the auction had ended but prior to us authorizing the RDOF long-form applicants.²⁰ We are likely to find good cause to grant similar waivers of non-compliance measures for authorized carriers, if they can demonstrate that federal or state funding has been awarded for the same locations, and will review such requests on a case-by-case basis.
- The Bureau has waived certain Commission rules where good cause exists, to reduce support recovery and penalties associated with defaults. We have provided, or are considering, limited waivers of the Commission’s rules to accommodate early defaults where carriers identified certain CBGs in their service areas that they would not serve, but they remained committed to serving the remaining CBGs in their service areas:
 - Specifically, we found good cause to grant a limited waiver of sections 54.320(d) and 54.806(c)(1) of the Commission’s rules that was narrowly tailored to stop payments of future support to the identified CBGs.²¹ These waivers adjust support amounts to the carrier to reflect that some areas will not be served, while ensuring that the carrier will otherwise remain subject to RDOF and CAF Phase II measures for remaining areas subject to the terms and conditions of support, including support recovery for all unserved locations at the end of the deployment term.²² Stopping support for these default areas can reduce the support amount the provider must pay back and the associated penalties.
- The Bureau also has the ability to waive other rules governing the timing and amount of support to be recovered, and eligibility of areas for other Commission broadband deployment programs for good cause shown.

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(Feb. 21, 2024) (defining an enforceable commitment to mean “a legally enforceable obligation by any federal, state, or local agency, utilizing Federal Funds, to provide broadband service with speeds of at least 100 megabits per second (Mbps) downstream and 20 (Mbps) upstream”); Department of Treasury, Guidance for the Coronavirus Capital Projects Fund for States, Territories, and Freely Associated States, at 3-4 (Sept. 2021), <https://home.treasury.gov/system/files/136/Capital-Projects-Fund-Guidance-States-Territories-and-Freely-Associated-States.pdf> (“To the extent Recipients are considering deploying broadband to locations where there are existing enforceable federal or state funding commitments for reliable wireline service at speeds of at least 100 Mbps of download speed and 20 Mbps of upload speed, the Recipient should ensure that the Capital Projects Fund grant funding will not be used for costs that will be reimbursed by the other federal or state funding stream(s). That is, Capital Projects Fund grant funds must be used only for complementary purposes.”).

¹⁹ Federal Communications Commission, National Broadband Map, <https://broadbandmap.fcc.gov/home> (last visited May 14, 2024).

²⁰ *Rural Digital Opportunity Fund Support for 2,072 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-911, at 7 n.49 (WCB Aug. 31, 2022); *Rural Digital Opportunity Fund Support for 1,764 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-1321, at 5 n.26 (WCB Dec. 16, 2022).

²¹ 47 CFR §§ 54.320(d), 54.806(c)(1); *see also Feb. 2024 Post-Authorization Default Public Notice* at 3-6; *Apr. 2024 Post-Authorization Default Public Notice* at 4-5; *May 2024 Post-Authorization Default Public Notice* at 3-5.

²² *See, e.g.,* 47 CFR §§ 54.320(c), (d), 54.806(b), (c).

- For example, the Bureau granted a limited waiver of the CAF Phase II rules to allow a carrier that had defaulted on some CBGs in its funded service area to pay early a portion of the required support recovery associated with its defaulted census blocks rather than waiting until the end of the deployment period.²³ If the carrier pays the portion of the required support recovery within six months, the Bureau will remove the defaulted locations from the carrier's required location total so the provider can come into compliance with its deployment obligations based on the remaining locations and therefore be able to continue receiving support for the remaining areas.²⁴
- As a reflection of “coordination with our sister federal agencies and state broadband offices to ensure the efficient use of federal broadband funding to provide access to all Americans,” the Bureau waived the Commission's rules to include in West Side Telephone Company's Enhanced A-CAM offer locations that had been excluded from the offer because, as of the date of the Enhanced A-CAM offer, they were subject to an enforceable commitment to deploy pursuant to a Community Connects Grant by the Department of Agriculture's Rural Utility Service (RUS).²⁵ Because RUS subsequently determined that the grantee would not be able to meet the terms of the grant and reduced the scope, the Bureau waived the rules to ensure that West Side would receive Enhanced A-CAM support to deploy broadband to those locations.²⁶
- Carriers that default can request payment plans for the support recovery amounts and related penalties for defaults.²⁷
- Carriers contemplating default may also request Commission approval to enter into transactions to transfer RDOF and CAF Phase II authorizations to other carriers. This relieves the original provider of its deployment obligations and avoids support recovery and default payments, while also ensuring that deployment will occur in the impacted areas.
 - The Bureau granted an application involving the transfer of RDOF obligations where, due to unanticipated changes to its business circumstances in Alabama, the support recipient would have been unable to assume the costs and obligations of the RDOF program. The parties explained that the transfer was a “more beneficial outcome than [the carrier] defaulting on its RDOF obligations and the recovery of associated support.”²⁸
 - The Bureau and the Virginia Department of Housing and Community Development worked closely with a carrier in an effort “to facilitate the coordination of federal and state funding programs to ensure that funds are being used most efficiently to provide

²³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 24-560 (WCB June 12, 2024).

²⁴ *Id.* at 6-7, para. 14.

²⁵ *Connect America Fund*, WC Docket No. 10-90, Order, DA 24-424 (WCB May 3, 2024).

²⁶ *Id.*

²⁷ *See, e.g., 73 Applicants for Rural Digital Opportunity Fund In Default*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 9009, 9017, para. 21 (2023), “Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.62 Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.”

²⁸ *Domestic Section 214 Application Granted For The Acquisition Of Certain Assets Of BroadLife Communications, Inc. by Yellowhammer Networks, LLC*, Public Notice, 38 FCC Rcd 5078, 5081 (WCB 2023).

service to as many unserved consumers living in Virginia as possible.”²⁹ These coordinated efforts have facilitated a proposed transaction where a new carrier has sought to acquire the CAF Phase II deployment obligations in counties where it was awarded funding through the Virginia Telecommunication Initiative.³⁰

- Similar transactions have also been approved for other RDOF and CAF Phase II support recipients.³¹
- CAF Phase II and RDOF support recipients are required to obtain and maintain Letters of Credit (LOC) of a certain value from banks with a Weiss bank safety rating of B- or higher in order to receive support. Providers and banking institutions raised concerns about this requirement because of the significant number of banks that have seen their Weiss bank safety rating fall below a B- and the resources required to find a new qualifying bank to issue an LOC. The Bureau issued a temporary one-year waiver of the bank safety rating standard rule,³² allowing CAF Phase II and RDOF support recipients to conserve resources and maintain their existing LOCs instead of acquiring new ones.
 - The Commission recently sought comment on potential changes to the LOC rules that could allow more CAF Phase II and RDOF support recipients to maintain their LOCs with their existing banks.
 - The Commission also sought comment on allowing CAF Phase II support recipients that meet all of their deployment obligations to continue to follow the RDOF LOC rules and maintain LOCs at a lower value than required under the CAF Phase II rules, and it sought comment on allowing RDOF providers that had deployed service to 10%, instead of 20%, of eligible locations in a given area by the end of their second year of support to lower the value of their LOC to one year of support.³³

The above examples demonstrate that the Commission’s existing processes are sufficient to address early defaults, and provide sufficient flexibility with respect to certain requirements for RDOF and CAF Phase II including: closely coordinating with state, territory, Tribal governments and other federal agencies; permitting carriers to transfer their deployment obligations to other carriers; and waiving Commission rules to reduce provider support recoveries and penalty payments associated with defaults. While the Entity Letter advocates for broad amnesty relief, the record does not demonstrate that broad amnesty is needed. In fact, the record notably lacks any support recipients stating that they cannot afford to continue with the program obligations but also cannot afford to meet the support recovery requirements under our existing default procedures.³⁴ Moreover, as commenters NTCA and ACA Connects -

²⁹ See *Domestic Section 214 Application and Waiver Requests Filed for the Acquisition of Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by EMPOWER Broadband, Inc.*, WC Docket Nos. 24-145, 10-90, Public Notice, DA 24-477, at 7 (WCB May 20, 2024).

³⁰ *Id.* at 7, n.46.

³¹ See, e.g., *Domestic Section 214 Application Granted For The Acquisition Of Certain Assets Of Echo Wireless Broadband, Inc. by Resound Networks, LLC*, Public Notice, 38 FCC Rcd 4328 (WCB 2023); *Domestic Section 214 Application Granted for the Transfer of Control of Certain Authorizations of Point Broadband Fiber Holding, LLC to R.M. Greene, Inc. AKA Beam*, WC Docket No. 22-344, Public Notice, DA 23-537 (WCB June 21, 2023).

³² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 24-244 (WCB Mar. 12, 2024) (*Weiss Waiver Order*).

³³ *Connect America Fund et al.*, WC Docket No. 10-90 et al, Notice of Proposed Rulemaking, FCC 24-64 (June 7, 2024) (*LOC NPRM*).

America’s Communications Association point out, the Commission’s rules already create a financial incentive to default at the earliest opportunity if a carrier discovers it cannot meet its obligations, because defaulting earlier in the RDOF process reduces the support recovery amount in most situations as the support recovery formula is based on a percentage of support received, similar to CAF Phase II support recovery.³⁵ Further, numerous parties opposed broad relief from program obligations in the event of a default.³⁶ There is also strong support in the record for not allowing “gaming” of the auction system by

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³⁴ See, e.g., comments and replies filed by service providers, some of which are CAF Phase II or RDOF participants, Daviess-Martin County Rural Telephone Cooperative Comments, AU Docket No. 20-34 et al. (rec. Mar. 26, 2024); Irby Company LLC Irby Utilities et al. Comments, AU Docket No. 20-34 et al. (rec. Mar. 26, 2024) (Irby Providers); Mediacom Communications Corporation Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); West Carolina Rural Telephone Cooperative et al. Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); New Hampshire Electric Cooperative Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); East Central Vermont Telecommunications District (dba ECFiber) Comments, AU Docket 20-34 et al. (rec. Mar. 26, 2024); Palmetto Broadband Coalition Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Empower Broadband, Inc. and Choptank Fiber, LLC Comments, WC Docket No. 10-90 et al. (rec. Mar. 25, 2024); Luminare Fiber and Co-Mo Comm, Inc. Comments, WC Docket No. 10-90 et al. (rec. Mar 25, 2024); Coalition of RDOF Winners Comments, AU Docket No. 20-34 et al. (rec. Mar. 22, 2024); ATN International Reply, WC Docket No. 10-90 et al. (rec. Apr. 9, 2024); BARConnects, LLC Reply, WC Docket No. 10-90 et al. (rec. Apr. 9, 2024); North Alabama Electric Cooperative Reply, WC Docket No. 10-90 et al. (rec. Apr. 9, 2024) (NAEC Reply) (supporting varying levels of relief for defaulting RDOF and CAF Phase II recipients, and in some cases rejecting offering relief, but the recipients supporting relief do not provide evidence to suggest that they are unwilling to default due to an inability to pay the required support recovery).

³⁵ See *Ex Parte* Letter from Michael Romano, Executive Vice President, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, AU Docket No. 20-34, et al., at 3 (rec. Mar. 8, 2024); ACA Connects—America’s Communications Association Comments, WC Docket No. 10-90 et al. at 3, fn.6 (rec. Mar. 26, 2024) (voicing support for this idea in NTCA’s *ex parte*). See also 47 CFR § 54.320(d)(2), *CAF Phase II Auction Order*, 31 FCC Rcd at 6017, para. 191 (requiring the Bureau to recover “an amount of support that is equal to 1.89 times the average amount of support per location *received* in the state over the six-year period for the relevant number of locations the [recipient] has failed to offer service to, plus 10 percent of the [recipient’s] total [CAF Phase II] support *received* in the state over the six-year period for deployment”) (emphasis added), 47 CFR § 54.806(c)(1)(i) (requiring the Bureau to recover an amount of support that is equal to the amount of support the recipient *received* in the state times a multiplier, plus, in most cases, an additional percentage of total authorized support depending on the number of defaulted locations). For carriers that fully withdraw from RDOF or CAF Phase II in a state, we stop the carrier’s support in the state immediately and recover support soon after the default is announced, which in most situations leads to recovering less support than if the carrier waited until it received six years of support during the deployment term before withdrawing. *Apr. 2024 Post-Authorization Default Public Notice*, at 5 & n.25. For carriers that default early on only certain CBGs in a state, we will recover support at the end of the six-year deployment period absent a waiver. *Id.* at 5. However, because we will immediately stop support for the CBGs where the carrier is defaulting upon announcing the default, the carrier will in most situations receive less support over the six-year deployment period for those CBGs than if it had waited to notify the Bureau that it is defaulting in those CBGs at the end of the deployment period. *Id.* at 4.

³⁶ See, e.g., ACA Connects—America’s Communications Association Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); ACLP at New York Law School Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Citizens Against Government Waste Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Digital Liberty Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Free State Foundation Comments, AU Docket No. 20-34 et al. (rec. Mar. 26, 2024); GTBA-Georgia’s Rural Telephone and Broadband Association Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Illinois Office of Broadband Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); James Bellina Comments, AU Docket No. 20-34 et al. (rec. Mar. 25, 2024); Jeffrey Westling Comments, AU Docket No. 20-34 et al. (rec. Mar. 26, 2024); National Rural Electric Cooperative Association Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); NTCA—The Rural Broadband Association Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); National Rural Telecommunications Cooperative Comments, WC Docket No. 10-90 et al. (rec. Mar. 25, 2024); NEK Community Broadband Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Taxpayer Protection Alliance Comments WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); WTA—Advocates for Rural Broadband Comments, WC Docket No. 10-90 et al. (rec. Mar. 12,

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carriers seeking release from their FCC obligations to pursue increased funding for some of the same areas from other funding programs.³⁷

While some parties, including certain parties to the Entity Letter, supported offering a brief window during which CAF Phase II and RDOF support recipients could default, in some cases without explanation or justification, and with established support recovery procedures reduced, these parties failed to demonstrate that there is a need for broad amnesty relief among RDOF and CAF Phase II providers.³⁸ In fact, while some comments offered various options for reduced default recovery, including using the lesser forfeiture structure available to all RDOF participants pre-authorization,³⁹ most commenters rejected the concept of allowing defaults with no support recovery as thwarting the reverse auction system, encouraging bad actors, and undermining certainty in future support programs.⁴⁰ As illustrated

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2024); American Consumer Institute Reply, WC Docket No. 10-90 et al. (rec. Mar. 29, 2024); Foundation for American Innovation Reply, WC Docket No. 10-90 et al. (rec. Apr. 9, 2024); Mississippi Center for Justice Reply, WC Docket No. 10-90 et al. (rec. Apr. 9, 2024) (generally opposing broad relief for defaulting RDOF and CAF Phase II recipients, although some of the commenters offer suggestions for providing narrowly tailored relief in certain scenarios).

³⁷ ACLP at NYLS Comments at 5; Georgia TBA Comments at 15; Irby Providers Comments at 7; Palmetto Broadband Coalition Comments at 4 (all of which support barring defaulters from bidding in BEAD); (but see, e.g., East Central Vermont Telecommunications District Comments at 2, an authorized RDOF support recipient that would like to default on 10% of its winning bid area because it is in another telecommunications district's territory (not because it cannot afford to serve), which comments that defaulting RDOF winners may be the only providers willing to provide service and should be able to bid again in BEAD for areas on which those providers defaulted in RDOF).

³⁸ See, e.g., American Association for Public Broadband Comments, AU Docket No. 20-34 et al. (rec. Mar. 26, 2024); Coalition of RDOF Winners Comments, AU Docket No. 20-34 et al. (rec. Mar. 22, 2024) and Reply, AU Docket No. 20-34 et al. (rec. April 9, 2024); Colorado Broadband Office Comments, WC Docket No. 20-34 et al. (rec. Mar. 25, 2024); Connect the Future Comments, WC 10-90 et al. (rec. Mar. 26, 2024); Eagle County Colorado Comments, WC Docket No. 10-90 et al. (rec. Mar. 13, 2024); Etheric Communications LLC Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Monster Broadband Inc. Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); NC Rural Center Comments, WC Docket No. 19-126 (rec. Mar. 13, 2024); Nebraska Public Service Commission Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Next Century Cities Comments, WC Docket No. 10-90 et al. (rec. Mar. 26, 2024); Quitman County Board of Supervisors Comments, WC Docket No. 19-126 (rec. Mar. 26, 2024); Upper Rio Grande Regional Working Group and the Rio Grande Council of Governments Comments, WC Docket No. 10-90 et al. (rec. Mar. 25, 2024); County Supervisors Association of Arizona Comments, WC Docket No. 10-90 et al. (rec. Mar. 22, 2024); Texas Rural Funders Comments, AU Docket No. 20-34 et al. (rec. Mar. 25, 2024); USTelecom—The Broadband Association Comments, WC Docket No. 19-126 et al. (rec. Mar. 26, 2024); Kittitas County Board of Commissioners Reply, AU Docket No. 20-34 et al. (rec. Apr. 9, 2024); Office of Broadband Access and Expansion (New Mexico) Reply, WC Docket No. 19-126 et al. (rec. Apr. 9, 2024); Utilities Technology Council Reply, WC Docket No. 10-90 et al. (rec. Apr. 9, 2024); Inter Mountain Cable, Inc. Reply, WC Docket No. 10-90 et al. (rec. Apr. 9, 2024) (generally supporting some form of relief for defaulting RDOF and CAF Phase II recipients, although some of the commenters propose limitations on the type of relief provided).

³⁹ Nebraska Public Service Commission Comments at 6-7, citing *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 735, para. 115 (2020)(*RDOF Order*), (noting that the Commission could apply the \$3,000 per violation pre-authorization default forfeiture, subject to adjustment based on the Commission's forfeiture criteria); NAEC Reply at 5.

⁴⁰ See, e.g., Free State Foundation (FSF) Comments at 1 (granting the request for “amnesty” “would further delay the connection of unserved households” and creates “a classic “moral hazard,” [which] would encourage irresponsible behavior that threatens the efficacy of reverse auctions”); Digital Liberty Comments at 2 (early defaults/amnesty would invite waste, delay broadband deployment, put undue strain on funding available for buildout, and undermine the integrity of future reverse auctions); and ACLP at NYLS Comments at 4 (misleading to claim that allowing early defaults now would make those areas eligible for BEAD, because some states have

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above, and by commenters Georgia Rural Telecom and Broadband Association (Georgia TBA)⁴¹ and Jeffrey Westling,⁴² support recipients already have the opportunity to seek waiver of non-compliance measures, and the Bureau may waive rules related to support recovery and penalties for defaults if the carrier demonstrates good cause.

Some governmental entities expressed concern that because the RDOF initial 40% buildout milestones will occur after BEAD eligibility determinations, RDOF carrier defaults due to non-performance would not be revealed until too late for those areas to be included in BEAD eligibility and funding.⁴³ However, none of these comments noted concerns about specific RDOF carriers. Moreover, the Bureau, as part of the Rural Broadband Accountability Plan,⁴⁴ monitors carrier deployment and is in contact with carriers that may be at risk of not meeting their deployment milestones. Recently, the Bureau contacted the small number of RDOF carriers with an upcoming buildout milestone that have not yet reported service to any locations in their RDOF areas. The Bureau directed those carriers to file in the Commission's Electronic Comment Filing System by May 15, 2024, public information regarding their plans to meet their December 31, 2024 buildout milestone requirement and is now reviewing those responses for follow up as needed with carriers and state broadband offices.

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completed or are near completing BEAD eligibility determinations, and even if areas are able to be included in BEAD eligibility they wouldn't necessarily receive BEAD funding); but *see, e.g.*, MediaCom Comments at 8-9 and NC Rural Center Comments at 1, which advocate for allowing authorized recipients to default quickly with no penalties, and Monster Broadband Comments at 1-3, also advocating for removing penalties for prior RDOF defaulters like Monster that can argue that default was to avoid duplicative funding or waste; and the Coalition of RDOF Winners Reply at 2, arguing that imposing the established default support recovery on defaulting RDOF participants would be "tantamount to blaming and penalizing them" for rising costs.

⁴¹ GTBA-Georgia's Rural Telephone and Broadband Association Comments, WC Docket No. 10-90 et al., at 15 (rec. Mar. 26, 2024).

⁴² Jeffrey Westling Comments, AU Docket No. 20-34 et al., at 3 (rec. Mar. 25, 2024).

⁴³ *See, e.g.*, Eagle County Colorado Comments, WC Docket No. 10-90 et al., at 1 (rec. Mar. 13, 2024); Quitman County Board of Supervisors Comments, WC Docket No. 19-126, at 1 (rec. Mar. 26, 2024); County Supervisors Association of Arizona Comments, WC Docket No. 10-90 et al., at 1 (rec. Mar. 22, 2024); Colorado Broadband Office Comments, WC Docket No. 20-34 et al., at 1-2 (rec. Mar. 25, 2024); Upper Rio Grande Regional Working Group and the Rio Grande Council of Governments Comments, WC Docket No. 10-90 et al., at 2 (rec. Mar. 25, 2024); NC Rural Center Comments, WC Docket No. 19-126, at 1 (rec. Mar. 13, 2024); Kittitas County Board of Commissioners Reply, AU Docket No. 20-34 et al., at 1-2 (rec. Apr. 9, 2024) (expressing general concern that CAF Phase II and RDOF recipients may not meet their obligations in the commenters' respective states and localities).

⁴⁴ Federal Communications Commission, Rural Broadband Accountability Plan, <https://www.fcc.gov/rbap> (last visited May 21, 2024).