



Comments for the Record

Comments on the Rural Digital Opportunity Fund

JEFFREY WESTLING | MARCH 27, 2024

COMMENTS OF JEFFREY WESTLING^[1]

The Federal Communications Commission designed the Rural Digital Opportunity Fund (RDOF) to ensure continued and rapid deployment of broadband networks to unserved Americans.^[2] As a part of the Universal Service Fund (USF), the Commission only has so many dollars to support broadband deployment, and as a result must maintain vigilant stewardship of the limited resources available. To that end, the Commission implemented safeguards to prevent firms from seeking funds without being able to meet their buildout obligations.^[3] While some firms inevitably defaulted, the penalties outlined in the order were clear and currently disincentivize firms from simply abandoning their buildouts.

The letter from 69 internet service providers, trade associations, state and local officials, school districts, unions, and civil society organizations (Amnesty Letter) proposes to bypass Commission rules and allow providers to default on RDOF obligations without penalty out of concern that firms that cannot meet their obligations will fail to build out networks in covered areas, and these areas will be left behind by other programs such as the Broadband Equity, Access and Deployment program (BEAD).^[4] While well-intentioned, a blanket amnesty period as proposed would delay deployment and could jeopardize successful implementation of the BEAD program. If the Commission does provide relief to firms, it should do so on a case-by-case basis.

The goal of any broadband deployment subsidy program should be to connect the unserved to high-speed, reliable broadband service. The Commission should not leave a community behind because a firm fails to meet its obligation. Yet granting an amnesty period to all providers with limited, if any, penalties for defaulting will fail to promote that goal and could incentivize future bad behavior.

First, many of the firms seeking to default on their RDOF obligations will next attempt to receive funding through the BEAD program if the waiver is granted. The coalition of RDOF winners, for example, has already sought additional funding through RDOF to meet its obligations, which again were bids they provided to the Commission.^[5] As USF funds are much more constrained than BEAD, and increasing funding would likely increase the contribution factor for telecommunications subscribers, these firms will almost certainly look elsewhere for additional funds. And there is no better place to look than BEAD, which has already gone beyond its original goal of connecting the unserved.^[6]

If firms cannot meet their obligations under RDOF, and the FCC grants a blanket amnesty period for them to default with no penalty, the National Telecommunications and Information Administration and state deployment offices could find themselves in a similar situation in the coming years. If the regulators do not hold providers to their commitments, more providers will come seeking another bite at the apple. And as these firms who already failed to meet their obligations receive more federal funding, this will reduce available resources for areas without existing coverage or obligations to be covered. As a result, fewer communities would receive the support they need to incentivize buildout.

Second, for many communities, providers can still deploy to the assigned areas despite the raises in costs, and allowing them to default if the economics do not justify a waiver of the rules would delay deployment years. The penalties, including both the \$3,000 per census block for defaulting prior to approval and the subsequent penalty provisions for those that have received funding, are designed to dissuade firms from overbidding and defaulting after the bids have been made.^[7] Thus, if the penalties must be paid, firms will still have an incentive to continue to deploy in areas where the margins are small but still profitable—or at least less costly than the penalties. If the goal is to ensure that communities are not left behind, forcing them to wait longer for broadband when a provider can cover the area under its existing RDOF obligations makes little sense. There may be some cases where amnesty is warranted, but these situations should be carefully evaluated by the Commission before waiving penalties.

Finally, while in some cases a waiver could be justified due to unforeseen events and unexpected rising costs, many of the costs cited by the Amnesty Letter could have been predicted. The reverse auction for RDOF occurred after the pandemic shut down businesses in the United States, and participating providers generally knew that costs would rise.^[8] The influx of funding in the BEAD program has also not yet gone out the door, limiting the potential impact of BEAD on the costs for RDOF buildouts. Instead, many of the cost increases could have been predicted at the time and were at least partially considered when participating in the auction. Granting a blanket amnesty without carefully examining the specifics of each situation, therefore, is not supported by an argument that the increase in costs was unforeseeable.

I share the Commission's goal of connecting all unserved Americans, but a blanket waiver is bad policy that would ultimately not help connect the communities at risk.

Respectfully submitted,

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[1] Jeffrey Westling is the Director for Technology & Innovation Policy at the American Action Forum. These comments represent the views of Jeffrey Westling and not the views of the American Action Forum, which takes no formal positions as an organization.

[2] *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report & Order (Feb. 7, 2020) (“RDOF Order”), <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf>.

[3] *Id.* at ¶ 114.

[4] Letter from 69 Internet Service Providers, trade associations, state and local officials, school districts, unions and civil society organizations, to Jessica Rosenworcel, Chairwoman, Federal Communications Commission, WC Docket No. 10-90 et al. (filed Feb. 28, 2024) (“Amnesty Letter”), <https://www.fcc.gov/ecfs/document/1022830318048/1>.

[5] Emergency Petition of the Coalition for RDOF Winners, AU Docket No. 20-34 et al. at p. 4 (Aug. 16, 2023), <https://www.fcc.gov/ecfs/document/108162898622642/1>.

[6] Jeffrey Westling, “Ensuring Broadband Deployment Subsidies Solve the Access Gap,” American Action Forum (Oct. 17, 2023), <https://www.americanactionforum.org/insight/ensuring-broadband-deployment-subsidies-solve-the-access-gap/>.

[7] RDOF Order at ¶ 114; *see also* 47 C.F.R. §§ 54.806(c) & 54.320(d).

[8] The Phase 1 auction began Oct. 29, 2020, and the pandemic began shutting down businesses in March 2020. *See Covid-19 Pandemic Timeline*, Northwestern Medicine (March 2023), <https://www.nm.org/healthbeat/medical-advances/new-therapies-and-drug-trials/covid-19-pandemic-timeline#:~:text=By%20March%202020%2C%20the%20World,COVID%2D19%20outbreak%20a%20pandemic>

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