Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Rural Digital Opportunity Fund Auction (Auction 904)	)	AU Docket No. 20-34
	)	

ORDER

Adopted: August 19, 2025 **Released: August 19, 2025**

By the Associate Bureau Chief, Wireline Competition Bureau:

1. In this Order, we deny Mercury Wireless Indiana, LLC (Mercury Indiana), Mercury Wireless Kansas, LLC (Mercury Kansas), and Mercury Broadband, LLC's (collectively Mercury) request for waiver of section 54.806(c)(1) of the Commission's rules, which governs the recovery of Rural Digital Opportunity Fund (RDOF) support when recipients do not fulfill the program's buildout requirements.[1] We find that Mercury did not demonstrate that good cause supports reducing the required support recovery for Mercury's RDOF defaults in Kansas, Illinois, Indiana, Michigan, Missouri, and Ohio.[2]

I. BACKGROUND

2. Mercury originated in Kansas and provides broadband services in the Midwest using fiber and fixed wireless technologies.[3] At the time of the RDOF auction, Mercury offered broadband service in Indiana and Kansas and was in the process of expanding service to Michigan, Missouri, and Ohio.[4] Mercury submitted a short-form application to participate in the RDOF auction pursuant to the

[1] 47 CFR § 54.806(c)(1); Mercury Broadband, LLC Petition for Waiver, WC Docket No. 19-126 et al. (filed May 19, 2025) (Mercury Petition).

[2] *Wireline Competition Bureau Announces Mercury Wireless Indiana LLC; Mercury Wireless Kansas LLC; PVT NetWorks, Inc.; Cable One, VoIP LLC d/b/a Sparklight; and Fidelity Cablevision, LLC Defaults on Certain RDOF Census Block Groups in Idaho, Illinois, Indiana, Kansas, Michigan, Missouri, and New Mexico*, AU Docket No. 20-34 et al., Public Notice, 39 FCC Rcd 12620 (WCB 2024) (*First Mercury Default Public Notice*); *Wireline Competition Bureau Announces Commnet Wireless, LLC, Mercury Wireless Indiana, LLC, and Mediapolis Telephone Company Defaults on Certain RDOF Census Block Groups in Idaho, Washington, Ohio, and Iowa*, AU Docket No. 20-34 et al., DA 25-45, Public Notice (WCB Jan. 15, 2025) (*Second Mercury Default Public Notice*).

[3] *See, e.g.*, Mercury Wireless Kansas, LLC, Initial Project Overview, Auction 904 Long-Form Application, https://auctionfiling.fcc.gov/form175/search175/index.htm (Jan. 29, 2021).

[4] *Id.* Mercury has also been authorized to receive Connect America Fund Phase II auction support in Indiana, Michigan, Ohio, Kansas, and Missouri. *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182 et al., Public Notice, 34 FCC Rcd 5966 (WCB/OEA 2019).

program rules and was found qualified to bid.[5] Mercury then bid in the auction where it identified the areas where it would like to provide service meeting the RDOF obligations, the performance tier and level of latency at which it proposed to provide service, and the level of support it would need to offer voice and broadband service meeting the relevant performance obligations.[6]

3. Mercury outbid other auction participants and won over $68 million in RDOF support to serve over 167,000 model-estimated locations.[7] Mercury then assigned its Indiana, Michigan, and Ohio winning bids to its subsidiary Mercury Indiana and its Illinois, Kansas, and Missouri winning bids to its subsidiary Mercury Kansas.[8] Mercury Indiana and Mercury Kansas filed long-form applications seeking to be authorized to receive support for the winning bids in exchange for the deployment of voice and broadband to locations their assigned states.[9] Had Mercury not submitted these winning bids, other carriers would have won support to serve the area, and if authorized, would have had the obligation to serve either 40% or 60% of the required number of locations by the end of this year.[10]

4. During the long-form application review process, the Wireline Competition Bureau (Bureau), the Office of Economics and Analytics (OEA), and the Rural Broadband Auctions Task Force (RBATF) sent letters to Mercury and other RDOF winning bidders notifying them that concerns had been raised regarding census blocks covered by winning bids being "already served by one or more service providers that offer 25/3 Mbps broadband service or otherwise rais[ing] significant concerns about wasteful spending . . . ."[11] In these letters, the Bureau, OEA, and the RBATF noted that it was Mercury's "responsibility to conduct due diligence to ensure [it] can meet the [RDOF] public interest obligations" and recommended that Mercury "assess whether existing service in these areas will affect [Mercury's] ability to meet all program requirements and deployment milestones."[12] The letters also explained that the Bureau, OEA, and the RBATF would "entertain requests for waiver of the penalties normally

[5] *386 Applicants Qualified to Bid in the Rural Digital Opportunity Fund Phase I Auction (Auction 904); Bidding to Begin on October 29, 2020*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 11356, 11378, Attach A. (WCB/OEA 2020). Mercury Broadband was formerly known as Mercury Wireless

[6] *Rural Digital Opportunity Fund Phae I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6146, paras. 209-11 (2020).

[7] *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888, 13919, Attach A. (WCB/OEA 2020). The initial number of locations that carriers are required to serve is based on the Connect America Cost Model's (CAM) estimate of how many locations are in the eligible census blocks in the carrier's service area. *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 709, para. 45 (2020) (*RDOF Order*).

[8] *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 4140 (WCB/OEA 2021) (*Auction 904 Long-Form Applicants Public Notice*).

[9] *Id.*

[10] 47 CFR § 54.802(c)(1).

[11] *See, e.g.*, Letter from Michael Janson, Director, Rural Broadband Auctions Task Force et al., to Matthew G. Sams, Mercury Wireless Indiana, LLC, at 1, https://us-fcc.app.box.com/s/lq4iqpjt8ukal4wve6hbrkbs5473kpcw/file/838616469541 (July 26, 2021) (Mercury Indiana Letter); Letter from Michael Janson, Director, Rural Broadband Auctions Task Force et al., to Matthew G. Sams, Mercury Wireless Kansas, LLC, at 1, https://us-fcc.app.box.com/s/lq4iqpjt8ukal4wve6hbrkbs5473kpcw/file/838616652420 (July 26, 2021) (Mercury Kansas Letter).

[12] Mercury Indiana Letter at 1; Mercury Kansas Letter at 1.

associated with defaults."[13] Ultimately, the Bureau, OEA, and RBATF granted carriers that chose to default on census blocks identified in the letters a waiver of the pre-authorization default forfeiture for those identified census blocks.[14] At that time, Mercury chose not to default on the identified census blocks, but it did default on other census blocks covering over $6.5 million in support for almost 45,000 model-estimated locations in Illinois, Indiana, Kansas, Missouri, and Ohio.[15]

5. In July 2022, Mercury was authorized to receive over $61 million in RDOF support over 10 years to serve over 122,000 locations.[16] Once it was authorized to receive support, Mercury was required to offer voice and broadband service meeting the relevant performance requirements to a set number of locations by certain service milestones over the next six years.[17]

6. After receiving more than $14 million in high-cost monthly support payments for over two years, in a series of letters in October and November 2024, Mercury officially notified the Bureau that it was completely withdrawing from RDOF in Illinois, Kansas, and Missouri, and that it would not fulfill its RDOF obligation to serve certain census block groups (CBGs) covering over 64,000 model-estimated locations in Indiana and Michigan collectively.[18] In December 2024, Mercury officially notified the Bureau that it would not fulfill its RDOF obligation to serve more than 14,000 model-estimated locations in Ohio, identifying the CBGs it would not serve.[19] In these letters, Mercury stated that it would "no longer be entitled to receive further RDOF support for the surrendered CBGs and that it may be subject to applicable non-compliance rules."[20] Mercury remains obligated to serve more than

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[13] *Id.*

[14] *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 17198, 17206 (WCB/OEA 2021).

[15] *Rural Digital Opportunity Fund Support for 2,061 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34, Public Notice, 37 FCC Rcd 5748, 5870-77, Attach. B (WCB/OEA 2022).

[16] *Rural Digital Opportunity Fund Support Authorized for 1,605 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 37 FCC Rcd 8331 (WCB/OEA 2022) (*Mercury Authorization Public Notice*). Specifically, Mercury Indiana was authorized to receive $9,437,647 in RDOF support to serve 13,529 model- estimated locations in Indiana; $37,598,649 in RDOF support to serve 77,925 model-estimated locations in Michigan; and $6,456,923 in RDOF support to serve 17,842 model-estimated locations in Ohio. *Id.* Mercury Kansas was authorized to receive $4,849,688 in RDOF support to serve 8,398 model-estimated locations in Illinois; $683 in RDOF support to serve 29 model-estimated locations in Kansas; and $3,378,309 in RDOF support to serve 5,023 model-estimated locations in Missouri. *Id.*

[17] 47 CFR § 54.802(c); *RDOF Order*, 35 FCC Rcd at 709-12, paras. 45-55. Compliance with service milestones is determined on a state-level basis—*i.e.*, the Bureau will confirm a carrier is serving the required location total across all of its eligible census blocks within a state, rather than on a census block-by-census block basis. *RDOF Order*, 35 FCC Rcd at 712, para. 54.

[18] *See generally First Mercury Default Public Notice*. *See also* Letters from AJ Long, Chief Financial Officer, Mercury Broadband, LLC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Oct. 23, 2024) (*First Mercury Withdrawal Letters*); Letters from AJ Long, Chief Financial Officer, Mercury Broadband, LLC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Nov. 6, 2024) (*Second Mercury Withdrawal Letters*); Letters from AJ Long, Chief Financial Officer, Mercury Broadband, LLC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Nov. 18, 2024) (*Third Mercury Withdrawal Letters*); Letter from AJ Long, Chief Financial Officer, Mercury Broadband, LLC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Nov. 25, 2024) (*Fourth Mercury Withdrawal Letter*).

[19] *See generally Second Mercury Default Public Notice*; Letter from AJ Long, Chief Financial Officer, Mercury Broadband, LLC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 19-126 et al. (filed Dec. 18, 2024) (*Fifth Mercury Withdrawal Letter*).

[20] *First Mercury Withdrawal Letters; Second Mercury Withdrawal Letters; Third Mercury Withdrawal Letters; Fourth Mercury Withdrawal Letter; Fifth Mercury Withdrawal Letter*.

30,000 model-estimated locations in Indiana, Ohio, and Michigan collectively, and is continuing to receive monthly support disbursements to do so.

7. The Commission takes compliance with the terms and conditions of RDOF seriously and imposes non-compliance measures if the requirements are not met. If a RDOF carrier fails to meet the interim service milestones, it will be subject to non-compliance measures that scale with the extent of non-compliance, including additional reporting requirements, withholding of future support, and recovery of support already paid.[21] For a RDOF carrier's sixth year 100% service milestone, the amount of support recovery scales with the size of the non-compliance gap.[22] Carriers must pay the required support recovery within six months after support recovery is initiated, or the Bureau will direct the Universal Service Administrative Company (USAC) to draw on the carrier's letter of credit.[23] RDOF carriers are also subject to other non-compliance measures including, but not limited to, the Commission's enforcement procedures and penalties, reductions in support amounts, potential revocation of eligible telecommunications carrier (ETC) designation, and suspension or debarment.[24]

8. *Mercury Request for Waiver.* In May 2025, Mercury submitted a petition requesting that the Bureau waive section 54.806(c)(1) of the Commission's RDOF support recovery rules for the locations it has returned in the six states.[25] Instead, Mercury proposes to pay back an amount equal to "the statewide average support per location that Mercury was authorized to receive in each state" multiplied by the number of locations where it has defaulted.[26] Mercury claims there is good cause to waive the Commission's RDOF support recovery rules. For example, Mercury explains that "broadband service has been deployed by other providers to nearly half of the locations" covered by Mercury's defaults with broadband at speeds of 100/20 Mbps,[27] that Mercury "came to the surprising realization" post-authorization that there were fewer actual locations than estimated by the CAM in Mercury's service area,[28] and that Mercury notified the Commission early on in the RDOF support term regarding its defaults so that unserved locations could be made eligible for other funding programs.[29] Mercury also

[21] 47 CFR §§ 54.320(d)(1), 54.806; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15694-700, paras. 142-54 (2014) (*2014 Connect America Order*) (adopting a framework for support reductions, support recovery, and reporting obligations that are calibrated to the extent of a carrier's non-compliance with service milestones).

[22] 47 CFR § 54.806(c)(1)(i)(A)-(C); *RDOF Order*, 35 FCC Rcd at 714-15, para. 60. Specifically, 1) if the RDOF carrier has deployed to 95% or more of its required locations but less than 100%, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location the RDOF carrier received in the state over the support term for the unserved locations; 2) if the RDOF carrier has deployed to 90% or more of its required locations but less than 95%, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location the RDOF carrier received in the state over the support term for the unserved locations, plus 5% of total authorized RDOF support for that state; and 3) if the RDOF carrier has deployed to fewer than 90% of its required locations, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location the RDOF carrier received in the state over the support term for the unserved locations, plus 10% of total authorized RDOF support for that state. *Id.* RDOF carriers are then subject to more support recovery if they are required to serve more locations than the CAM estimated and they do not serve all of the additional locations by the eighth-year service milestone. 47 CFR § 54.806(c)(ii).

[23] 47 CFR § 54.804(c)(4)(i); *RDOF Order*, 35 FCC Rcd at 715, para. 63.

[24] 47 CFR §§ 54.320(c), 54.806(b); *RDOF Order*, 35 FCC Rcd at 716, para. 63.

[25] *See generally* Mercury Petition; 47 CFR § 54.806(c)(1).

[26] Mercury Petition at 5-6.

[27] *Id.* at 2, 6-8, Exh. A.

[28] *Id.* at 2, 8.

[29] *Id.* at 2, 9.

argues that "many locations already served by Mercury (outside of the RDOF program) are now designated as unserved locations in the BEAD program" so that Mercury "will soon face subsidized competition in these areas, allowing new entrants to offer steeply subsidized prices."[30] Mercury claims that "this reality forced [it] to reassess its entire RDOF economic model," and it "was ultimately left with no alternative other than to forfeit" the locations at issue here.[31] Mercury also claims that the required support recovery "would be neither reasonable nor proportionate to the harm caused" by Mercury's default,[32] and that imposing the support recovery rules "would be unfair, inequitable, burdensome, against public policy and not in the public interest."[33]

9. Alternatively, Mercury creatively asks that rather than recover support pursuant to section 54.860(c)(1), the Commission impose only the $3,000-per-CBG forfeiture that applies to pre-authorization defaults, claiming "the factors contributing to Mercury's need to forfeit here could not have been known by Mercury prior to authorization," and that Mercury's situation more closely aligns with the Commission's adoption of a pre-authorization forfeiture "designed to incentivize auction winners to conduct due diligence on their support areas soon after the close of the auction, and to forfeit early so that locations within their support areas can be eligible for future broadband subsidy programs."[34] Mercury also requests that it be allowed to reduce the value of its letters of credit so that that they cover the support that Mercury continues to receive and for the defaulted locations to be removed from its RDOF obligation so that it may "remain in compliance going forward" and will not be subject to the section 54.320(d)(1) non-compliance tiers for its already defaulted locations.[35]

II. DISCUSSION

10. Generally, the Commission's rules may be waived for good cause shown.[36] Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.[37]

11. We do not find good cause to grant Mercury's requested waiver and reduce the required support recovery for Mercury. Mercury's decision to bid on areas, win support, apply for support, and then default has potentially delayed the deployment of broadband to tens of thousands of Americans living in high-cost areas. Mercury has not established special circumstances that warrant granting the waiver. We are not convinced that Mercury's decision to default before the end of the deployment period constitutes special circumstances justifying further waiver of our support recovery rules.[38] We have already found that defaulting prior to the end of the deployment period was a special circumstance that warranted waiving our rules to stop payments of Mercury's future support in the defaulted areas because Mercury will no longer be serving the area pursuant to its RDOF obligations[39] and waiving the

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[30] *Id.* at 3, 9-10, Exh. B.

[31] *Id.* at 10.

[32] *See, e.g.*, *id.* at 5, 11.

[33] *See, e.g.*, *id.* at 1-3.

[34] *Id.* at 11. *See also RDOF Order*, 35 FCC Rcd at 71435-36, paras. 114-17.

[35] Mercury Petition at 12; 47 CFR § 54.804(c)(1); 54.320(d)(1).

[36] 47 CFR § 1.3.

[37] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

[38] *See, e.g.*, Mercury Petition at 2, 9.

[39] *See, e.g.*, *First Mercury Default Public Notice*, 39 FCC Rcd at 12624-25; *Second Mercury Default Public Notice*, at 5-6 (waiving 47 CFR §§ 54.320(d), 54.806(c)(1)).

requirement that Mercury serve upon reasonable request newly built locations in the defaulted areas since the areas will be open to other funding opportunities.[40]

12. Mercury has already largely benefitted from these grants of relief by having its support stopped in defaulted areas so that the required support recovery, which is a multiplier of "support received," is less than if Mercury was required to remain in the program for the duration of the six-year deployment term in the states where it fully defaulted and was required to continue to receive payments for the defaulted areas for the duration of the six-year deployment term in the states where it remains obligated to serve other RDOF areas.[41] Accordingly, while we acknowledge Mercury's decision to notify of us of its intention to default so these areas could be made eligible for other funding, we are not persuaded that Mercury's decision warrants even more relief. We also note that while BEAD funds and other public funding sources, if actually available and sufficient, may now be used to help serve these defaulted areas to the extent they remain unserved and underserved,[42] these funds could have potentially been used to serve other unserved and underserved locations if Mercury had met its RDOF obligations.

13. We are also unpersuaded that the fact that there are fewer locations in Mercury's service area than are estimated by the CAM constitutes special circumstances.[43] Each RDOF bidder was required to conduct due diligence prior to bidding, and was required to certify in its short-form application that it acknowledged it "has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of [RDOF] support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the [RDOF] obligations and the Commission's rules generally."[44] Here, Mercury claims that after it was authorized to receive RDOF support, it "came to the surprising realization that the [CAM] had substantially overestimated the number of locations in many of the" defaulted CBGs, suggesting that Mercury did not conduct the required due diligence before bidding on these areas and then subsequently filing a long-form application to receive support in these areas.[45] If it had, it could have factored this potential discrepancy into its bidding and its decision whether to apply to receive support in these areas.

14. We are not convinced by Mercury's argument that the availability of BEAD funding in its non-RDOF service area for unserved or underserved locations from state challenge processes constitutes special circumstances.[46] In its petition, Mercury claims that it encountered obstacles with the

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[40] *See, e.g.*, *First Mercury Default Public Notice*, 39 FCC Rcd at 12624-25; *Second Mercury Default Public Notice*, at 5-6 (waiving 47 CFR § 54.802(c)(1)(iii)).

[41] 47 CFR § 54.806(c)(1)(i)(C); *First Mercury Default Public Notice*, 39 FCC Rcd at 12624-25, 12626, n.33; *Second Mercury Default Public Notice*, at 5-6.

[42] Mercury Petition at 9.

[43] *Id.* at 2, 8.

[44] *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6125-26, paras. 128-133 (2020). *See also RDOF Order*, 35 FCC Rcd at 724-25, para. 84 (explaining that requiring RDOF bidders to certify that they have conducted due diligence "will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeiture amounts imposed in the event of default, and that the applicant will not attempt to place responsibility for the consequences of its bidding activity on either the Commission or third parties").

[45] Mercury Petition at 8.

[46] NTIA set specific requirements for states' challenge processes to determine whether locations are eligible for BEAD, and Mercury had the opportunity to participate in these state challenge processes. Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity at 34-35 (May 13, 2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (BEAD Program NOFO); Department of Commerce, National Telecommunications and Information Administration, Policy Notice (Feb. 8,

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state challenge processes for locations where it reported the availability of broadband service on the National Broadband Map[47] but its own website indicated service was unavailable. Mercury explains that it did not have sufficient resources to effectively dispute state challenge process availability challenges, indicating that each location required on-site verification by a technician to confirm service availability.[48] Mercury concedes that it had not expended the resources needed to conclusively determine that it was able to serve such locations. Under these circumstances, we find it was foreseeable that these locations could be made available for BEAD funding under state challenges processes.

15. While we acknowledge Mercury's claims that a portion of its RDOF service areas may already be served by carriers offering broadband at speeds of at least 100/20 Mbps, we disagree that it would serve the public interest to provide relief for Mercury.[49] Mercury waited until after being authorized to default on almost 400 of the almost 500 census blocks identified in the letters that the Bureau, OEA, and the RBATF sent during the long-form application process.[50] Mercury either decided against conducting the necessary due diligence prior to authorization to determine whether it could still meet its obligations in these 400 census blocks, as well as taking the opportunity for the pre-authorization forfeitures to be waived, or it made the business decision to become authorized in these census blocks and take on the risk of potentially not being able to meet its obligations.

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2024), https://broadbandusa.ntia.doc.gov/sites/default/files/2024-02/BEAD_Challenge_Process_Policy_Notice_v1.3.pdf (BEAD Challenge Process Policy Notice). The states started with data filed through the Commission's Broadband Data Collection (BDC) as depicted on the Commission's National Broadband Map and then conducted their own challenge processes whereas stakeholders could challenge a carrier's BDC claim to be serving a location. BEAD Challenge Process Policy Notice at 8 (requiring states to use the National Broadband Map "as a starting point to identify the list of BEAD-eligible locations within their jurisdiction, prior to conducting a challenge process."). *See also* FCC, National Broadband Map, https://broadbandmap.fcc.gov/home (last visited July 14, 2025). Locations that the state determines through its challenge process to be unserved or underserved are then potentially eligible for BEAD funding, if they are not ineligible for other reasons. 47 U.S.C. § 1702(a)(1)(A)&(B), (f) (defining unserved and underserved locations and explaining that BEAD funds may be used to award subgrants for "unserved service projects and underserved service projects").

[47] The Commission's rules make clear that a carrier should only report a location as served through the BDC process if it is capable of "performing a standard broadband installation" to serve the location which includes being able to serve the location within 10 business days of request. 47 CFR § 1.7004 (stating that carriers must submit information to "document the areas where the provider has actually built out its broadband network infrastructure, such that the provider is able to provide service, and where the provider is capable of performing a standard broadband installation."); 47 CFR § 1.7001(a)(19) (defining a "standard broadband installation" to mean "[t]he initiation by a provider of fixed broadband internet access service in an area in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider, and includes the initiation of fixed broadband internet access service through routine installation that can be completed not later than 10 business days after the date on which the service request is submitted."). *See also Establishing the Digital Opportunity Data Collection et al.*, WC Docket No. 19-195 et al., Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7465, 7466, paras. 12, 14 (incorporating the Broadband DATA Act's definition of standard broadband installation), 47 U.S.C. § 641(14). A state's determination regarding whether a location is served or unserved pursuant to its state challenge process is not determinative of any challenges the Commission might receive as a part of its BDC challenge process. *See e.g.*, FCC, How to Submit an Availability Challenge, Broadband Data Collection Help Center, https://help.bdc.fcc.gov/hc/en-us/articles/10476040597787-How-to-Submit-an-Availability-Challenge (May 15, 2025).

[48] Mercury Petition at 9-10 & Exh. B (explaining that Mercury "is careful not to overpromise on its website without on-site verification by a technician").

[49] *Id.* at 2, 6-8, Exh. A.

[50] *First Mercury RDOF Default Public Notice* at Attach. A; Mercury Indiana Letter at Attach; Mercury Kansas Letter at Attach.

16. We also note that because Mercury has already defaulted in these areas that it claims are served, Mercury is no longer receiving support in the CBGs at issue.[51] The Bureau has already recovered support for the states where Mercury fully defaulted or will recover support at the end of the deployment period in the states where Mercury continues to have RDOF obligations.[52] Accordingly, there is currently no RDOF support being used to overbuild existing service in these areas. We fail to understand how permitting Mercury to retain some of the required support recovery after it has chosen to default for various reasons, including for locations that are still unserved, would result in an efficient use of support.

17. Moreover, we decline to adopt Mercury's creative and unprecedented proposal that we instead recover support from Mercury based on the rules applicable to pre-authorization defaults—i.e., $3,000 per defaulted CBG, capped at 15% of the total bid amount for the support term.[53] Mercury had the option to default prior to being authorized to receive RDOF support in order to be subject to these forfeitures instead of post-authorization support recovery, and for the reasons we have explained, Mercury has not convinced us that good cause justifies deviating from our rules.[54]

18. Consistent with precedent, we also conclude that it would undermine the support recovery rules and auction integrity to reduce the required support recovery because RDOF bidders may have bid differently in the auction if they knew that the Bureau would reduce or apply a different methodology for support recovery for post-authorization defaults than the one set forth in our rules.[55] The Commission adopted the support recovery rules prior to the auction so that each carrier participating in the auction was fully aware of the consequences of not meeting the RDOF obligations if it became a winning bidder and then pursued its application to become authorized for support.[56] We are not persuaded it would serve the public interest to reduce support recovery for a carrier that did not fulfill its due diligence obligations because such an action may incentivize carriers in future auctions to disregard the terms and conditions of later high-cost programs.

19. For the same reasons, we disagree with Mercury's claims that it would be unfair or inequitable to impose the required support recovery on Mercury, and that the required support recovery is unreasonable and disproportionate to the bids Mercury submitted.[57] At the outset, Mercury could have chosen not to seek funding through this program if it disagreed with the support recovery rules. To the extent an entity believed that the support recovery was unreasonable or disproportionate for RDOF post-authorization defaults, the time to challenge the support recovery rules was when those rules were adopted, prior to bidding in the auction and long before filing a post-auction long-form application for support. Instead, although Mercury defaulted in late 2024 and knew the consequences for defaulting at that time,[58] it waited until right before the May 2025 deadline for making the support recovery payments

[51] *First Mercury Default Public Notice*, 39 FCC Rcd at 12624-25, 12626, n.33; *Second Mercury Default Public Notice*, at 5-6.

[52] *First Mercury Default Public Notice*, 39 FCC Rcd at 12624-25, 12626, n.34; *Second Mercury Default Public Notice*, at 5-6.

[53] Mercury Petition at 11. *See also RDOF Order*, 35 FCC Rcd at 735-36, paras. 114-17.

[54] *See, e.g.*, Mercury Petition at 2-3, 9-10, Exh. B.

[55] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 39 FCC Rcd 12627, 12636, para. 23 (WCB 2024) (*RTC RDOF Early Support Recovery Order*). *See also 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 et al., Public Notice, 39 FCC Rcd 7015 (WCB 2024) (*WCB Default Guidance Public Notice*) (noting the Bureau's "strong interest in preserving the integrity of the Commission's broadband deployment programs").

[56] 47 CFR § 54.806(c); *RDOF Order*, 35 FCC Rcd at 714-15, paras. 60-61.

[57] *See, e.g.*, Mercury Petition at 1-3, 5, 11.

[58] *See generally First Mercury Default Public Notice*; *Second Mercury Default Public Notice*.

for the states where it completely withdrew from RDOF before requesting relief from the required support recovery.[59]

20. It would be unfair and inequitable to apply a different calculation to Mercury. The required support recovery is based upon an objective calculation adopted after notice and comment, and which applies to all support recipients that do not fulfill their build-out requirements.[60] Mercury made the decision to participate in RDOF and be subject to its terms and conditions and then made the decision to default by identifying the specific CBGs where it would not meet its obligations, acknowledging the applicable non-compliance measures.[61] As designed, the required support recovery scales with the number of locations associated with the CBGs for which Mercury will not fulfill its obligation to serve pursuant to the RDOF program rules. We disagree that the amount of support that Mercury will be required to pay pursuant to the support recovery rules is disproportionate, particularly when compared to the amount of support Mercury was authorized for over the 10-year support term. Mercury was authorized to receive over $61 million in RDOF support over the 10-year support term in six states, fully aware that it would need to meet its obligations as a condition of being authorized for this support.[62] In the states where Mercury withdrew from RDOF—Illinois, Kansas, and Missouri--the Commission recovered just over $4.1 million.[63] For its remaining states, where Mercury still retains the obligation to serve some of its RDOF CBGs—Indiana, Michigan, and Ohio—we estimate the required support recovery in these states will range from approximately $24 million to approximately $27 million based on a number of assumptions regarding Mercury's deployment. The actual required support recovery amount will depend on when Mercury deploys RDOF service to its remaining locations in these states.[64] Moreover, the fact that we have already stopped much of Mercury's support for its significant post-authorization defaults in these states has reduced the amount of support recovery required.[65]

21. Bidding carriers knew what to expect if they were authorized and then later chose not to meet their obligations associated with their winning bids. Mercury has made its own business decision, based on a variety of factors, not to meet its RDOF obligation to serve more than a model-estimated 92,000 locations.[66] Regardless of when Mercury notified the Bureau of its intent to default in the deployment term,[67] the fact remains that Mercury failed to meet its RDOF obligation for a large number of locations. We are not persuaded it would serve the public interest to now revisit these rules and take a

[59] *See generally* Mercury Petition.

[60] 47 CFR § 54.806(c); *RDOF Order*, 35 FCC Rcd at 714-15, paras. 60-61.

[61] *First Mercury Withdrawal Letters; Second Mercury Withdrawal Letters; Third Mercury Withdrawal Letters; Fourth Mercury Withdrawal Letter; Fifth Mercury Withdrawal Letter*.

[62] *Mercury Authorization Public Notice; First Mercury Default Public Notice. See also* 47 CFR § 54.804(c)(4) ("Authorization to receive Rural Digital Opportunity Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.").

[63] 47 CFR § 54.806(c)(1)(i)(C).

[64] For the states where Mercury still retains the obligation to serve some of its RDOF CBGs, we can only estimate how much support Mercury will be required to pay at the end of the deployment term because support recovery is based on support received and the amount of support Mercury will ultimately receive during the deployment term will depend on when Mercury falls within certain non-compliance tiers and thus will have support withheld. 47 CFR §§ 54.320(d)(1); 54.806(b).

[65] 47 CFR § 54.320(d)(1)(iv); *First Mercury Default Public Notice*, 39 FCC Rcd at 12624-25; *Second Mercury Default Public Notice*, at 5-6.

[66] *See First Mercury Default Public Notice*; *Second Mercury Default Public Notice*.

[67] Mercury Petition at 11 (claiming that the "aim" of the RDOF compliance rules "is not served by the imposition of massive penalties in the case of a provider that handed back its locations early . . . .").

different approach for Mercury because Mercury has made a business decision to default on serving a large number of locations and now finds it too expensive to pay the required support recovery.[68] Instead, we believe our actions to date have served the public interest by achieving the appropriate balance between preserving RDOF's terms and conditions while also providing limited waivers of some of our rules to provide flexibility and some relief to carriers that notify us that they plan to default prior to the end of the deployment period.

22. Additionally, we believe that Mercury's situation can be distinguished from the Commission's deduplication actions, and thus disagree with Mercury's claim that it should serve as precedent that supports a grant of waiver relief here.[69] At a minimum, carriers seeking to deduplicate federal funding do so *prior* to defaulting, in a partnership to conserve scarce federal dollars, not after the fact and fully understanding non-compliance measures. Indeed, in seeking deduplication, carriers may still be willing to build out to those areas if the alternative were incurring non-compliance measures. Moreover, our deduplication efforts are consistent with the Congressional directive to coordinate public broadband funding with other agencies.[70] The actions cited by Mercury narrowly addressed a situation where another provider was awarded funds after the RDOF provider was authorized to receive support and that other provider was obligated by another public entity to serve all of the locations in the relevant RDOF CBGs at speeds at least equal to the speeds the RDOF provider was required to offer.[71] To ensure no rural Americans are left behind, we have only deduplicated funding where an entire CBG is covered, except in the narrow, unique circumstance of locations on Tribal land.[72] The public interest in avoiding duplicative public support as part of a conversation prior to default is plain—avoid the inefficient duplicative funding while ensuring universal service.[73] In comparison, a number of factors led to Mercury making the business decision based on its interests to default on its obligations.[74] Mercury has not sufficiently demonstrated that some of these factors were unforeseeable or preventable, and in some areas Mercury is seeking relief for locations that are unserved.[75]

23. Finally, we previously allowed a RDOF carrier that had defaulted on some CBGs in its service area prior to the end of the deployment period to make adjustments to its required location total and its letter of credit when it had paid a portion of the required support recovery early and also remained subject to the remaining support recovery at the end of the deployment term.[76] If Mercury chooses to pursue this path, it can file a petition for waiver for this specific relief and the Bureau will consider it accordingly.

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[68] *See, e.g.*, *id.* at 10-11.

[69] Mercury Petition at 7-8 (citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 24-1278 (WCB Dec. 19, 2024) (*RiverStreet Order*)).

[70] *See* Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, § 904, 134 Stat. 1182, 3214 (codified at 47 U.S.C. § 1308) (requiring the FCC, USDA, and NTIA to "enter into an interagency agreement requiring coordination between the covered agencies for the distribution of funds for broadband deployment . . . .").

[71] *RiverStreet Order*, at 3-4

[72] Tribal boundaries do not neatly align with CBGs, and the Tribe typically in these scenarios has not explicitly granted consent to a carrier's network deployment on Tribal land.

[73] *RiverStreet Order*, at 3-4.

[74] *See, e.g.*, Mercury Petition at 2-3, 6-10.

[75] *Id.* at 8, Exh. A.

[76] *See generally RTC RDOF Early Support Recovery Order*. *See also* Mercury Petition at 12.

III. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

25. IT IS FURTHER ORDERED that the petition for waiver of Mercury Wireless Indiana, LLC, Mercury Wireless Kansas, LLC, and Mercury Broadband, LLC is DENIED to the extent described herein.

26. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

AJ Burton
Associate Bureau Chief
Wireline Competition Bureau