

**TESTIMONY OF BRENDAN CARR
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**BEFORE THE
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS**

**“Budget Hearing – Fiscal Year 2025 Request for the Federal Communications
Commission”**

May 16, 2024

Chairman Joyce, Ranking Member Hoyer, and distinguished Members of the Subcommittee, it is an honor to appear before you today. Since joining the FCC, I have had the privilege of testifying before a number of House and Senate Committees, but this is my first time appearing before the Appropriations Committee and this Subcommittee. So I want to thank you for the invitation to testify on the FCC’s budget request for Fiscal Year 2025.

Since this is my first time appearing before the Committee, I wanted to start with a brief introduction. I first joined the FCC as a staffer back in 2012, and I have had the privilege of serving in a number of different roles at the agency—from an attorney in the agency’s Office of General Counsel to a legal advisor to then-Commissioner Ajit Pai to General Counsel of the FCC before being nominated to serve as Commissioner in 2017. In my time at the agency, I have had the honor of working alongside some of the most talented public servants in government. And over the last three years, I have welcomed the opportunity to work with Chairwoman Rosenworcel to advance the public interest and many of our shared priorities.

We have worked together on telehealth initiatives that have helped expand affordable, high-quality care for low-income Americans and veterans. We have worked together on rules that stood up 988 as the universal telephone number for the 988 Suicide & Crisis Lifeline, which is a national network of more than 200 crisis centers that help thousands of people every day. We have worked together to enhance competition and protect consumers, including through our 2022 MTE decision that benefited Americans living in apartment buildings and condos. We have worked together to promote innovation, including by removing outdated regulations that would have prevented radio broadcasters from choosing to compete more effectively against their Big Tech competitors. And we have worked together to secure America’s communications networks from entities that pose a risk to U.S. national security, including by taking actions against Huawei, ZTE, Hytera, Hikvision, Dahua, China Mobile, China Telecom, and Kaspersky Lab. Indeed, the FCC will be voting next week on proposed rules that could potentially bar these and other untrustworthy actors from controlling the test labs and certification bodies that are central to the FCC’s equipment authorization program.

I also agree with a number of the asks included in the Administration’s budget requests. For starters, I agree that Congress should reauthorize the FCC’s spectrum auction authority. Given this Subcommittee’s focus on appropriations, it is worth noting that the FCC is

one of the few agencies that can generate revenue for the federal government. By auctioning off spectrum—the airwaves necessary to power 5G and other next-gen wireless services—the Commission has raised over \$233 billion over the course of 100 auctions. But the FCC’s general spectrum auction authority lapsed for the first time in the agency’s history back in March of 2023. America’s spectrum leadership is part and parcel of our geopolitical leadership. More spectrum also means more competition, it means lower prices for consumers, and it means bringing communities across the digital divide while creating new jobs and growing the economy. I have appreciated the work from bipartisan leaders on both the House and Senate Commerce Committees to restore the Commission’s auction authority, and I would encourage Congress to continue working towards a resolution that will affirm the FCC’s role as the nation’s expert agency on spectrum. Doing so would advance America’s 5G leadership and strengthen our national security.

I also agree that Congress should fully fund the nation’s “rip and replace” initiative. This program, formally known as the Secure and Trusted Communications Networks Reimbursement Program, reimburses small, rural Internet service providers for the costs they incur to remove, replace, and dispose of equipment and services provided by Huawei and ZTE. As a government, we have taken the smart step of ordering the removal of this insecure and high-risk equipment—gear that proliferated in rural networks near some of our military’s most sensitive facilities—and we have said that we would compensate covered providers for the costs of removing and replacing that gear. We need to make good on that promise. A \$3.08 billion funding shortfall now threatens the success of this initiative. So I would encourage Congress to look for ways to close that funding gap.

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I want to turn now from the Biden Administration requests that are relevant to the FCC’s work to the agency’s own budget request for Fiscal Year 2025. Although all Commissioners are asked to vote on a budget proposal prepared by the FCC Chair, I have not been asked to participate in the development of the agency’s budget request. And after reviewing the FCC proposal, I was unable to support it. I voted against it. I would like to highlight a couple of concerns I have with the FCC’s budget request.

1. As a threshold matter, I do not support the FCC’s request for a 14.8% increase in budget authority. This request represents a significant departure from recent agency precedent. For instance, in 2017 for its FY2018 budget, the FCC requested a 5.2% *decrease* from the FCC’s FY2017 level. In the three years that followed, the FCC either requested further decreases or minimal year-over-year increases. The FCC’s most recent request paints an entirely different picture. After seeking progressively higher increases in budget authority for each of the past three years (FY2022 sought a 3.7% increase, FY2023 sought a 4.3% increase, and FY2024 sought a 5.3% increase), the FCC’s FY2025 request seeks a budget increase that is nearly three times larger than the increase the agency sought for FY2024. This FY2025 request for a 14.8% increase in budget authority is not in line with recent agency precedent. Nor does it reflect Congress’s focus on reining in government spending.

2. The FCC budget request would also significantly expand the FCC’s headcount without, in my view, making the case for this increase. The FCC’s FY2025 budget seeks 1,600 Full Time Equivalents or FTEs. If the FCC were to hire up to that number, it would represent the largest percentage increase in agency FTEs since Congress passed the Telecommunications Act of 1996—a legislative enactment that tasked the FCC with a significant increase in implementing proceedings. Such a large increase is out of step with modern agency precedent. Indeed, for FY2018, the FCC sought a 6.6% *decrease* in FTEs over the FY2017 level. And the FCC sought that same level of FTEs in FY2019, FY2020, and FY2021.

3. I also do not support the FCC’s separate request for a 5.1% increase in budget authority for our Spectrum Auctions program. There is no question that the FCC has important work to do on the spectrum front, and I would like to see an increase in the FCC’s output on wireless matters. But the past few years have been marked by a significant decrease in productivity on spectrum issues, not an increase. And the Biden Administration has made clear that it has no plans to reverse that trend line. Let me explain.

Last November, the Biden Administration released its much-anticipated National Spectrum Strategy. But the Biden Administration’s plan commits to freeing up exactly zero megahertz of spectrum. Instead, it says that the Administration will simply continue to study various spectrum bands for years to come. This means that the Biden Administration has no plan for significant, near-term action on spectrum auctions. This not only sets America apart from our global allies and adversaries alike—which are now passing the U.S. by on spectrum—it marks a departure from our own recent record of action.

From 2017 through 2020, the FCC freed up roughly 6,000 MHz of spectrum for licensed use alone, plus thousands of additional megahertz of spectrum for unlicensed use. We held the first auction of mid-band spectrum in 2020 with 70 MHz worth of spectrum in the 3.5 GHz band. At 2.5 GHz, we transformed the rules governing nearly 200 MHz worth of this mid-band spectrum to support 5G builds and teed up over 100 MHz for auction. At 4.9 GHz, we modernized the regulation of a 50 MHz swath of spectrum. In the L Band, we authorized 30 MHz of spectrum for 5G and IoT. At 5.9 GHz, we opened up 45 megahertz for unlicensed. Plus, we pushed out an additional 1,200 MHz for unlicensed in the 6 GHz band. Finally, in the C Band, we cleared 280 MHz of sought-after mid-band spectrum that has quickly become the backbone of 5G in the United States today.

In other words, the FCC freed up more spectrum for commercial use in those years than the Biden Administration even plans to study. And it is not even close.

The FCC has demonstrated the capacity to deliver significant spectrum wins without the type of significant increase in budget authority that it now requests. I am confident that the agency can continue to do so. And reversing the Biden Administration’s backsliding on spectrum would generate billions of dollars in revenue for the Treasury that could be used for deficit reduction.

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More broadly, the FCC’s budget request and many of its recent actions reflect Biden Administration decisions to elevate partisan politics above smart policy.

One example of the Biden Administration’s misplaced priorities is its quixotic pursuit of regulating the Internet as a Title II utility service. This decision is nothing more than an unlawful agency power grab. Back in 2017, when we reversed the FCC’s two-year experiment with government control of the Internet, Title II activists predicted that this would mark the end of the Internet as we know it. Did any of those apocalyptic predictions come to pass? Of course not. In fact, Internet speeds increased, prices decreased in real terms, and record-breaking Internet builds brought millions of Americans across the digital divide.¹

But last month, the FCC voted—over my dissent²—to put those heavy-handed regulations back in place. That effort is doomed to fail. And that is not just my opinion. Two of President Obama’s former Solicitors General wrote a paper in which they concluded that the FCC’s Title II decision “will not survive a Supreme Court encounter with the major questions doctrine.”³ For that reason, the former Solicitors General stated, the FCC’s decision to head down this path will represent a “massive waste of resources for the government, industry, and the public, as well as the lost opportunity to pursue more pressing policy goals such as deploying robust broadband service to all Americans.”⁴

I agree with President Obama’s lawyers. I do not know how many staff hours and agency resources the FCC has expended on Title II. But in my view, the FCC should not spend any more resources enforcing Title II regulations, at least until the litigation over this agency decision plays out.

Another example is the Biden Administration’s demand that the FCC adopt “digital equity” rules for the Internet—a sweeping set of regulations that hand the Administrative State an unprecedented set of new controls over the provision of Internet service. The FCC did exactly that late last year, even though the FCC majority concluded that “there is little or no evidence” in the agency’s record to even indicate that there has been any intentional discrimination in the broadband market. The FCC’s “digital equity” rules and its Title II regulations are, in many ways, fraternal twins. Again, the FCC should not be expending any additional resources on these regulations until the appellate process has run its course.

¹ See Press Release, FCC Commissioner Brendan Carr, *New Data Confirm What Americans Already Know: The Internet Is Not Broken and President Biden’s Plan For Government Control Won’t “Fix It”* (Apr. 19, 2024), <https://docs.fcc.gov/public/attachments/DOC-401950A1.pdf>.

² See Dissenting Statement, FCC Commissioner Brendan Carr, *Safeguarding and Securing the Open Internet*, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, WC Docket Nos. 23-320, 17-108 (Apr. 25, 2024), <https://docs.fcc.gov/public/attachments/FCC-24-52A3.pdf>.

³ See Donald B. Verrilli, Jr. & Ian Heath Gershengorn, *Title II “Net Neutrality” Broadband Rules Would Breach Major Questions Doctrine*, at 2 (Sept. 20, 2023), <https://aboutblaw.com/bazq>.

⁴ *Id.* at 16, 17.

For still another, the FCC’s own budget request reflects misplaced priorities. Take the strategic goals section of the agency’s budget request. Under Strategic Goal 2, the FCC states that it will use its budget to “promote diversity, equity, inclusion” as well as accessibility. It is not clear to me what the FCC means when it states that promoting DEI is its second highest priority, particularly given the FCC’s other strategic goals and our core statutory mission.

The FCC’s description of this strategic goal certainly does not shed much light on the question. In furtherance of promoting DEI, the FCC’s budget proposes to use funds to “identify” and “eliminate historical, systemic, and structural barriers that perpetuate disadvantaged or underserved individuals and communities.” The particular activities envisioned in the FCC’s budget include “quarterly dialogue sessions,” “regular webinars,” “global education and awareness,” “outreach and conduct programs,” and gaining a “deeper understanding” of how FCC rules “may promote or inhibit advances” in DEI.

Nor does the FCC’s budget request quantify how much funding it has been or will be expending to promote DEI.

In my view, the FCC should refocus its priorities around several core goals. We should be focused on continuing to secure our communications networks. We should be focused on freeing up more spectrum for consumer use. We should be focused on modernizing our infrastructure rules. And we should be protecting consumers. In other words, the FCC should be ensuring that everyone in this country has a fair shot at affordable, next-generation connectivity. I have highlighted some of my specific ideas for how the FCC can do this in testimony before the House Energy and Commerce Committee last summer.⁵

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In addition to reorienting the agency around those core policy objectives, I wanted to raise some specific ideas for consideration given this Subcommittee’s focus on the responsible expenditure of government resources.

First, Congress has been actively considering the future of the Affordable Connectivity Program or ACP. This is a pandemic-era program that Congress created in December 2020 through the Consolidated Appropriations Act of 2021. At that time, the program was known as the Emergency Broadband Benefit Program, and Congress funded it through a \$3.2 billion appropriation to help qualifying households afford Internet service during the pandemic. Then, in late 2021, with passage of the Infrastructure Investment and Jobs Act or IIJA, Congress provided an additional \$14.2 billion for the program, now known as ACP, while making some minor revisions to it. ACP funding provides a discount of up to \$30 per month for Internet service for qualifying households and up to \$75 per month for qualifying households on Tribal lands. ACP funding also provides eligible households with a one-time discount of up to \$100 to purchase a tablet or other device.

⁵ See Testimony, FCC Commissioner Brendan Carr, *Oversight of the Federal Communications Commission* (June 21, 2023) <https://docs.fcc.gov/public/attachments/DOC-398705A1.pdf>.

When I voted with my FCC colleagues to adopt rules implementing the law Congress passed, I encouraged the agency to focus ACP dollars on connecting those Americans that remained stuck on the wrong side of the digital divide—meaning, those who did not have a broadband connection because they could not afford one. To that end, the FCC’s implementing decision provided “that a primary goal of the Affordability Connectivity Program should be to close the digital divide by reducing the broadband affordability gap.”⁶ Likewise, we directed FCC staff to coordinate with USAC to collect data that would enable the Commission to assess progress towards meeting this goal, including data about “broadband adoption by first-time subscribers and increasing enrollments in areas with low broadband penetration rates.”⁷ And we established in our ACP Grant Outreach Program a mechanism for prioritizing applications that seek to enroll households or individuals that are not subscribed to broadband today.⁸

While the Biden Administration has focused on the fact that 23 million households are enrolled in ACP, as its way of making the case that the program is delivering on the government’s stated goals, I believe that the magnitude of the funds at issue counsel in favor of a more thorough and objective review of ACP. Here’s what the FCC’s own data reveals. The FCC released a survey earlier this year showing that only 21.8% of ACP beneficiaries lacked Internet service before the program started. In addition, the FCC’s survey data indicates that only about 15% of ACP beneficiaries state that they would lose Internet service if the program ended.⁹ In addition, roughly 40% of all households in America are currently eligible to participate in ACP.

Given the data, I do not believe that Congress should simply add more money to ACP in its current form. The FCC’s own analysis shows that today the program is not sufficiently tailored to meeting the federal government’s stated goal of closing the broadband affordability gap. Instead, Congress should focus on reforms that would help ensure that the government delivers on its goal of universal service. That means taking a fresh look at eligibility criteria, targeting those Americans that would otherwise be stuck on the wrong side of the digital divide, right-sizing the FCC’s programs, requiring a more robust verification process, and significantly increasing program safeguards.

Second, the FCC should enhance the agency’s administration of its spending programs (whether those programs use appropriated funds or USF dollars) by formalizing its process of consulting with the Commission’s Office of Inspector General. The Senate’s recent

⁶ See *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 21-450, at para. 211 (Jan. 14, 2022) <https://docs.fcc.gov/public/attachments/FCC-22-2A1.pdf>.

⁷ *Id.* and at para. 212 (“We agree... that the Commission should invest in direct, data-driven outreach to unconnected households to increase awareness of the Affordable Connectivity Program.”).

⁸ See *Affordable Connectivity Program*, Second Report and Order, WC Docket No. 21-450, at para. 68 (establishing criteria by which applications would be prioritized) (“(1) the extent to which an applicant would target unserved low-income households or individuals (i.e. households or individuals that are not currently on a low-income broadband plan or that do not have broadband service)[.]”) (Aug. 5, 2022) <https://docs.fcc.gov/public/attachments/FCC-22-64A1.pdf>.

⁹ See *Measuring the Impact of the ACP: Survey Results* (Feb. 2024) <https://www.fcc.gov/sites/default/files/ACP-Survey-Results.pdf>.

confirmation of the FCC's first presidentially appointed Inspector General gives us a unique opportunity to do this. Both the FCC Chair and FCC Commissioners have the opportunity to consult with the FCC's IG, and we often do. But there is no formal process whereby the agency solicits the IG's feedback prior to the Commission adopting rules that implement new spending programs or revise existing ones. I have found that the IG's Office has a wealth of expertise when it comes to ferreting out waste, fraud, and abuse and identifying important programmatic controls. So I believe that the FCC should adopt a process that provides the IG's Office with an opportunity to provide advice and recommendations to the full Commission before the agency acts and on a regular basis thereafter.

Third, the federal government needs to do a better job of coordinating its approach to broadband spending—particularly as the number and magnitude of broadband programs have accelerated over the past four years. I remain concerned that the federal government is not putting appropriate guardrails in place. And this is unacceptable given both the unprecedented amount of federal support at issue and the unique opportunity these funds provide for connecting American families.

Two years ago, the GAO published a concerning report regarding the billions of dollars that the federal government is spending on digital divide efforts. In particular, the GAO determined that “U.S. broadband efforts are not guided by a national strategy” and that “[f]ederal broadband efforts are fragmented and overlapping, with more than 100 programs administered by 15 agencies,” risking overbuilding as well as wasteful duplication. GAO highlighted that “most of the agency officials” they interviewed agreed that a new national strategy would be helpful. Yet the GAO also noted that “[t]he Executive Office of the President has not decided if a national strategy is needed.”

Given the Biden Administration's failure to act on this key GAO recommendation, I am pleased that Congress has been working to fill in the gap including by advancing the PLAN for Broadband Act. This bipartisan, bicameral legislation led by Representatives Walberg and Kuster and Senators Wicker, Luján, Thune, and Welch responds to those GAO concerns by requiring the Administration to develop and implement a national coordinating strategy.

While Congress enacted the Broadband Interagency Coordination Act in 2020, the agreement does not cover all of the agencies with broadband funds, nor does it cover all of the broadband funds within the agencies that it does cover. For example, neither the Department of Education nor the Treasury Department, each with hundreds of billions of dollars at their disposal, are covered by this agreement. The agencies' apparent lack of coordination is compounded by the fact that they are relying on differing and sometimes divergent standards both in terms of identifying areas eligible for funding and the types of networks that qualify for support.

The lack of coordination threatens to leave rural communities and unconnected Americans behind. Take, for example, the Administration's \$42.5 billion broadband, equity, access and deployment (BEAD) program. Without greater coordination, BEAD funds will undoubtedly be spent overbuilding areas that already have, or will have, high-speed Internet service subsidized through other federal support programs or otherwise available. And a lack of

coordination is only the tip of the iceberg when it comes to concerns about the future of the Biden Administration's BEAD program. As I have highlighted previously, the Biden Administration has deviated substantially from the statutory text Congress has passed, including through technology preferences and provisions that encourage states to engage in rate regulation. These are Biden Administration policy cuts that will end up artificially raising the cost of building out broadband. Indeed, that is why at least twelve states have already signaled that they will burn through their allotment of BEAD dollars without meeting their broadband goals. And that is why I have real doubts that the BEAD program will end up delivering on the Biden Administration's promise of Internet for all.

Finally, given the critical role the FCC plays in advancing the bipartisan mission of universal connectivity, it may be helpful for Congress to examine the FCC's current authority to assess and collect the regulatory fees that offset the agency's budget request. It is important that the burdens imposed by these collections are allocated across industry segments in a fair manner. And that is not always the case. For instance, broadcasters have tended to shoulder more than their appropriate share of the regulatory fee burden over the years. I would welcome the chance to work with Congress on ways this could be accomplished.

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In closing, Chairman Joyce, Ranking Member Hoyer, and distinguished Members of the Subcommittee, thank you again for the opportunity to testify. I look forward to answering your questions.