

**TESTIMONY OF BRENDAN CARR
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**BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF
THE UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY
AND COMMERCE**

“The Fiscal Year 2025 Federal Communications Commission Agency Budget”

July 9, 2024

Chairman Latta, Ranking Member Matsui, and distinguished Members of the Subcommittee, thank you for the invitation to testify. It is an honor to appear before you today.

I want to start with the subject of today’s hearing—the FCC’s Fiscal Year 2025 budget request. As I testified before the House Appropriations Committee earlier this year,¹ I do not support the FCC’s request for a 14.8% increase in budget authority. As I detail in that testimony, the FCC’s request represents a significant departure from recent agency precedent—both in terms of the year-over-year funding increase itself as well as the agency’s notable expansion of its headcount. The FCC’s request also fails to align with Congress’s focus on reining in government spending.

More broadly, though, the FCC’s budget request and many of its recent actions reflect the Biden Administration’s misplaced priorities and a massive regulatory overreach. So I want to focus on those issues in my testimony today.

Last November, when the subcommittee held its last FCC oversight hearing, I testified about the important and bipartisan work we had been accomplishing at the agency. Indeed, in the first few years since 2020, the FCC delivered a series of common-sense wins for the American people on matters ranging from competition and universal service to national security and consumer protection.²

But my November testimony also highlighted the Biden Administration’s accelerating pattern of pushing regulatory agencies to hit individuals and businesses with a regulatory onslaught from Washington. Indeed, over the last year, the Biden Administration has pressed the FCC to break hard left. And it has. You can see it in the agency’s decision to impose heavy-handed, Title II regulations on the Internet. You can see it in the agency’s new Digital Equity

¹ See Testimony of Brendan Carr, Commissioner, Federal Communications Commission, 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), <https://docs.fcc.gov/public/attachments/DOC-402970A1.pdf>.

² See Testimony of Brendan Carr, Commissioner, Federal Communications Commission, Before the Subcommittee on Communications Technology of the United States House of Representatives Committee on Energy and Commerce, *Oversight of President Biden’s Broadband Takeover* (Nov. 30, 2023), <https://docs.fcc.gov/public/attachments/DOC-399997A1.pdf>.

rules, which hand the administrative state nearly limitless powers to veto private sector decisions.

And as I noted in my November testimony, you can see this same pattern with the Biden Administration’s implementation of its \$42 billion Internet infrastructure plan—known as the Broadband Equity, Access, and Deployment program or BEAD—which puts partisan political goals ahead of sound policy.

So today I want to provide the Subcommittee with an update on BEAD—a program where this Subcommittee has been engaged in active oversight. This \$42 billion program is the Biden Administration’s signature plan for extending high-speed Internet to millions of Americans across every state in the nation. And it is a program that is going off the rails.

It has now been 967 days since President Biden signed this \$42 billion plan into law.³ And today, not one person has been connected to the Internet with those dollars—not one home, not one business. Indeed, not even one shovel worth of dirt has been turned with those dollars. And it gets worse. The Biden Administration recently confirmed that no construction projects will even start until sometime next year at the earliest and in many cases not until 2026. This makes President Biden’s signature BEAD initiative the slowest moving federal broadband deployment program in recent history, as far as I can tell.

The Biden Administration’s failure to launch is not only predictable, it was predicted.⁴ Two years ago, Members of Congress wrote the Commerce Department and explained that the Biden Administration’s decision to create “a complex, nine-step, ‘iterative’ structure and review process . . . is likely to mire State broadband offices in excessive bureaucracy and delay connecting unserved and underserved Americans as quickly as possible.”⁵ Other Members of Congress kept up this drum beat of concern. In 2023, for instance, Members of Congress wrote the Biden Administration and explained that its rules “divert resources away from bringing broadband service to rural America and are inconsistent with NTIA’s statutory authority.”⁶ They stated in clear terms that the Biden Administration’s decision to add requirements found nowhere in the statutory text “will prolong the digital divide and put billions of scarce taxpayer dollars at risk.”⁷

So what has the Biden Administration been doing in those 967 days instead of connecting Americans? It has been layering on red tape and advancing a wish list of progressive policy goals.

³ Infrastructure Investment and Jobs Act, P.L. 117-158, 135 Stat. 429, § 60102 (2021) (IIJA).

⁴ Brendan Carr, *Barreling toward a broadband blunder*, The Hill (Apr. 8, 2021), <https://thehill.com/blogs/congress-blog/technology/547073-barreling-towards-a-broadband-blunder/>.

⁵ Letter from Sen. Susan Collins, *et al.* to Sec’y Gina Raimondo, Dep’t of Commerce (Aug. 18, 2022), https://www.collins.senate.gov/imo/media/doc/letter_to_secraimondobeadnofoaug182022.pdf.

⁶ Letter from Sens. John Thune, Ted Cruz, *et al.* to Sec’y Gina Raimondo, Dep’t of Commerce (Apr. 20, 2023), https://www.thune.senate.gov/public/?_cache/files/d4e51503-5d28-4744-9033-18c9e38da22d/C3ACEFE761F313B6ABBD99AC63692025.as4.20.2023-bead-nofo-letter-to-ntia-1-.pdf.

⁷⁷ *Id.*

The Biden Administration is using this \$42 billion program to pursue a climate change agenda, DEI requirements, technology biases, price controls, preferences for government-run networks, and rules that will undoubtedly lead to wasteful overbuilding. All of this will leave rural and other unconnected communities behind. And the Biden Administration has chosen to head down this path despite Congress expressly prohibiting the Administration from doing much of this partisan improvising.

Take rate regulation. Congress included in the authorizing law a provision that expressly states: “Nothing in this title may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service.”⁸ Nonetheless, the Biden Administration is using this \$42 billion program to force ISPs to abide by price controls, as Members of Congress have pointed out.⁹ Indeed, this Subcommittee has called out the Biden Administration for its efforts to regulate rates contrary to Congressional intent on numerous occasions.¹⁰ And here’s just one specific example of how it is happening—the Biden Administration rejected Virginia’s proposal to give ISPs flexibility to propose a price that is “affordable” without a specific price.¹¹ The Biden Administration instructed Virginia to resubmit its proposal with either a specific price or determinate formula that would yield a price.¹² Meanwhile, the Biden Administration appears to be giving states a green light to embark on aggressive rate regulation in violation of BEAD’s authorizing law—states like California, which are planning on awarding points to ISPs that meet defined speed-for-price metrics.

Or take the Administration’s technology preferences—whether they are for fiber or against unlicensed fixed wireless and satellite services. The authorizing statute does not codify any technology preference. Indeed, some of the law’s lead drafters wrote to the Biden Administration and explained that its implementing rules deviated from the law Congress negotiated because the Administration included technology preferences.¹³

The Biden Administration’s decision to pick technological winners and losers will frustrate the law’s objectives. Heavily favoring more expensive fiber projects will rapidly deplete the program’s funding and leave many locations without money. Ignoring communities

⁸ IIJA § 60102(h)(5)(D).

⁹ See, e.g., Letter from Senator Eric Schmitt to Sec’y Gina Raimondo, Dep’t of Commerce (June 11, 2024), <https://www.schmitt.senate.gov/wp-content/uploads/2024/06/NTIA-BEAD-rate-regulation-letter-.pdf>.

¹⁰ See Letter from Chair Bob Latta, Chair Rodgers *et. al* to Asst. Sec’y Alan Davidson, Dep’t of Commerce (Dec. 15, 2023), https://d1dth6e84htgma.cloudfront.net/12_15_23_Letter_to_NTIA_re_Rate_Regulation_42bbb6fbf4.pdf; see also Letter from Chair Rodger and Chair Latta to Asst. Sec’y Alan Davidson, Dep’t of Commerce (Oct. 3, 2023), https://d1dth6e84htgma.cloudfront.net/Letter_to_NTIA_re_State_Plans_FINAL_01ef8f75c1.pdf.

¹¹ See Virginia Department of Housing and Community Development, *Commonwealth Connect Broadband Equity, Access, and Deployment Program Initial Proposal Volume 2 with NTIA Curing Edits* at 51 (2024), <https://dhcd.virginia.gov/sites/default/files/DocX/vati/ntiacuringround2changes-virginiabeadvolume2.pdf>.

¹² *Id.* at 53.

¹³ Letter from Sen. Susan Collins, *et al.* to Sec’y Gina Raimondo, Dep’t of Commerce (Aug. 18, 2022), https://www.collins.senate.gov/imo/media/doc/letter_to_secraimondobeadnofoaug182022.pdf.

already connected to high-speed service through unlicensed, fixed wireless technologies will result in government-subsidized overbuilding. Preferring fiber builds in nearly all cases—which involve significantly more construction and labor—will delay deployments. Indeed, as the law’s drafters made clear, we have a range of next-generation technologies that can offer robust, affordable, high-speed Internet services—from 5G fixed wireless to a new generation of low-earth orbit satellites—that can reach unconnected families virtually overnight. The Biden Administration’s restrictions will prevent states from funding projects that could quickly bridge the digital divide.

Too much regulation from Washington is needlessly driving up the cost of building broadband. That is why you are seeing so many of the Internet providers that would ordinarily participate in a program like BEAD sounding the alarm and saying that the red tape is simply too much to cut through. Indeed, just recently, the head of the Minnesota Telecom Alliance, which represents 70 broadband builders in the state, declared that “zero” of its members would be participating in the BEAD program given the Administration’s current approach.¹⁴ Several states, along with many in the broadband industry, have registered their concern that BEAD allocations will be insufficient to reach all unserved locations.¹⁵

This is not to say that there are no broadband builds underway today with dollars the Biden Administration has made available. But those other initiatives—whether administered by the Treasury Department, the Department of Agriculture, or another component of the federal government—have their own sets of issues.¹⁶

For one, there is a worrying lack of coordination across these various agencies and their respective programs. Indeed, the GAO has issued a report flagging that these “[f]ederal broadband efforts are fragmented and overlapping, with more than 100 programs administered by 15 agencies,” risking overbuilding as well as wasteful duplication.¹⁷

For another, the Biden Administration is spending dollars on the penny in many cases. In 2020, the FCC secured a commitment from Starlink to provide high-speed Internet service to

¹⁴ Ana Radelat, *‘Internet for all’ plans in Minnesota in trouble as broadband providers balk at ‘onerous’ regulations*, MinnPost, (Jun. 25, 2024), <https://www.minnpost.com/greater-minnesota/2024/06/internet-for-all-plans-in-minnesota-in-trouble-as-broadband-providers-balk-at-onerous-regulations/>.

¹⁵ See Julia King, *New Mexico, Minnesota latest to say BEAD funds won't be enough*, FierceNetwork (Aug. 10, 2023), <https://www.fierce-network.com/broadband/new-mexico-minnesota-latest-say-bead-funds-wont-be-enough>; Julia King, *States' BEAD excitement tempered by execution, mapping worries*, FierceNetwork (June 28, 2023), <https://www.fierce-network.com/broadband/states-bead-excitement-tempered-execution-mapping-worries>; Jericho Casper, *Flush with BEAD Cash, at least 13 states make plans for ‘Nondeployment’ funds*, Broadband Breakfast (Mar. 4, 2024), <https://broadbandbreakfast.com/flush-with-bead-cash-at-least-13-states-make-plans-for-nondeployment-funds/>.

¹⁶ See, e.g., Testimony of Brendan Carr, Commissioner, Federal Communications Commission, Before the Subcommittee on Communications Technology of the United States House of Representatives Committee on Energy and Commerce, *Connecting America: Oversight of the FCC* (March 31, 2022), <https://docs.house.gov/meetings/IF/IF16/20220331/114545/HHRG-117-IF16-Wstate-CarrB-20220331.pdf>.

¹⁷ U.S. Government Accountability Office, *Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide*, GAO-22-104611 (May 31, 2022), <https://www.gao.gov/assets/gao-22-104611.pdf>.

over 640,000 homes and business across 32 states for \$885 million, which amounted to about \$1,300 per location in support. But then the government abruptly and unlawfully revoked that award back in 2022.¹⁸ The Biden Administration is now spending orders of magnitude more in federal taxpayer dollars to connect locations through its own broadband initiatives,¹⁹ including BEAD.

So here's the bottom line—absent major reforms, the Biden Administration's implementation of this \$42 billion BEAD program is wired to fail. It is easy to understand why. Rather than faithfully implementing the statute, the Biden Administration has put its thumb on the scale in favor of extraneous political goals that have more to do with ideology than they do with getting people connected. The law did not require that the Biden Administration preference one technology over others—rather, the law is tech-neutral. The law did not require rate regulation—in fact, it expressly prohibited it. The law did not require preferences for government-run networks over private sector ones—far from it. And of course, Congress did not require the Biden Administration to evaluate Internet builds based on how much those projects advanced DEI or the climate change agenda—yet the Biden Administration is doing so anyways.

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But the Biden Administration's \$42 billion BEAD initiative is not the only instance of regulatory overreach that merits this Subcommittee's attention. There are now a growing set of FCC decisions that plainly deviate from the laws you here in Congress have passed. While many of those decisions—like the FCC's Title II decision and its Digital Equity rules for the Internet—plainly exceeded the bounds of the FCC's authority on the day the agency adopted them,²⁰ the Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo* requires the FCC to change course in a very fundamental way. But right now, the FCC is running headlong into a series of court losses.

At its core, the Supreme Court's decision in *Loper Bright* reinforces the Framers' decision in the Constitution to vest the legislative or law making power in the people's representatives here in Congress. *Loper Bright* does so by making it less likely that courts will find that Congress inadvertently leaked law making power to administrative agencies. And even less likely that courts will uphold administrative agency decisions that effectively take legislative power from the Article I Branch that Congress never delegated. If there is a good and novel

¹⁸ See Dissenting statement of Brendan Carr, Commissioner, Federal Communications Commission, Application for Review of Starlink Services, LLC, Rural Digital Opportunity Fund, Rural Digital Opportunity Fund (Auction 904), Viasat Auction 904 Application for Review, WC Docket No. 19- 126, OEA Docket No. 20-34, GN Docket No. 21-231, Order on Review, <https://docs.fcc.gov/public/attachments/FCC-23-105A2.pdf>.

¹⁹ See, e.g., Ryan Tracy, *The \$53,000 Connection: The High Cost of High-Speed Internet for Everyone*, Wall Street Journal (Sep. 5, 2023), <https://www.wsj.com/us-news/the-53-000-connection-the-high-cost-of-high-speed-internet-for-everyone-c903163f>.

²⁰ As I indicated in my dissents in those cases, the Supreme Court would have applied the major questions doctrine—not the *Chevron* doctrine—in those two cases. 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>.

policy idea that should become federal law, the Constitution makes clear that the place for having that debate is here in the halls of Congress, and the people that should decide whether to codify that idea into law are Americans' elected representatives.

Loper Bright makes it more clear than ever before that the FCC is exceeding its authority in significant ways. I will give you just a few examples that are currently up for a Commission vote. The agency should not move forward with any of these.

First, the FCC is engaged in an unprecedented effort to regulate political speech in the run up to a national election. In particular, the FCC has unveiled a plan to regulate the use of AI in political advertisements during this election cycle.²¹ This effort echoes a DNC-backed initiative at the Federal Election Commission to impose new regulations on AI-generated political speech before voters hit the ballot boxes this fall.

The FCC's attempt to fundamentally alter the rules of the road for political speech is as misguided as it is unlawful.²² Indeed, the Chairman of the Federal Election Commission, Sean Cooksey, wrote a letter to the FCC making it clear that Congress has given the FEC, not the FCC, sole authority to regulate disclaimer and reporting requirements specific to political communications.²³ Particularly in light of *Loper Bright*, it is time for the FCC to abandon this unlawful attempt to regulate political speech.

Second, the FCC is poised to vote on rules later this month that would divert funds under the E-Rate program for the purpose of subsidizing Wi-Fi hotspots that would be lent out by libraries and schools. The Biden Administration has publicly called on the FCC to move forward with this rulemaking. Except Congress has limited the FCC's E-Rate authority to enhancing the access of "classrooms" and "libraries" to telecommunication services—not any remote location at which people might want to learn.²⁴ Indeed, Congress passed a specific COVID-era law that expressly authorized the FCC to fund connections outside of schools. This decision only highlights the fact that the FCC's existing E-Rate authority does not allow it. So whatever its policy merits, a hotspot intended to be used *outside* a classroom or library—and for any purpose—defies the clear textual limits Congress placed in the statute. Particularly now, following the Supreme Court's decision in *Loper Bright*, courts will not defer to an FCC decision to read into the Communications Act a grant of authority that Congress did not provide. Therefore, I am calling on the FCC to remove this decision from our July Commission meeting.

²¹ See Press Release, *Chairwoman Rosenworcel Unveils First Step in New AI Transparency Effort to Disclose AI-Generated Content in Political Ads on TV and Radio* (May 22, 2024), <https://docs.fcc.gov/public/attachments/DOC-402740A1.pdf>.

²² See Press Release, *Carr Opposes New Effort To Regulate Political Speech Ahead of Election* (May 23, 2024), <https://docs.fcc.gov/public/attachments/DOC-402768A1.pdf>.

²³ Letter from Chairman Sean Cooksey, Federal Election Commission, to Chairwoman Jessica Rosenworcel, Federal Communications Commission (June 3, 2024), <https://radioink.com/wp-content/uploads/2024/06/Sean-Cooksey-Letter-To-Jessical-Rosenworcel.pdf>.

²⁴ 47 U.S.C. § 254(h)(2)(A).

Third, the FCC has been considering a White House-backed proposal to ban so-called “bulk billing” arrangements. These are plans that, as the FCC has previously determined, benefit families living in apartments, condos, public housing, and other multi-tenant buildings because they allow them to take advantage of lower cost broadband services by enabling building owners to leverage their purchasing power. Why would the FCC want to raise prices for Americans living in apartments, condos, and public housing? The FCC’s record certainly does not support the Commission moving forward with this proposal. So the FCC should abandon its bulk billing proposal.

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While the Biden Administration has been backing efforts to pursue a partisan political agenda, the normal blocking and tackling has fallen by the wayside. The FCC’s bipartisan and time-tested playbook for accelerating Internet builds rests on two main pillars: modernizing infrastructure rules and freeing up more spectrum. Yet the Biden Administration is not getting it done on either front.

Start with infrastructure. Though the Biden Administration has appropriated billions of dollars for broadband builds, it has not paired those efforts with steps to streamlining permitting or zoning approvals. That is like stepping on the gas and the brakes at the same time. And it is marked departure from the work the FCC has made in prior years. Indeed, under Chairman Ajit Pai, I had the opportunity to lead the FCC’s efforts to update our infrastructure rules, and those reforms helped to accelerate Internet builds across the country. The FCC should be looking to expand on those efforts. But it has taken no significant steps on this front over the past few years. It is a real missed opportunity. As I have detailed in prior testimony, there many steps the FCC could take to help accelerate Internet builds.²⁵

Or take spectrum. Maintaining and extending U.S. leadership in wireless has been one of my top priorities since I joined the Commission in 2017. Getting our spectrum policies right translates directly into bringing Americans across the digital divide, spurring innovation, creating jobs, and growing our economy. U.S. leadership in wireless is also part and parcel of America’s geopolitical leadership. When we free up spectrum, the world takes notice. It puts the wind at the backs of those working to advance our values. It ensures that next-generation services develop in ways that will benefit our innovators and interests—rather than regimes that seek to diminish America’s standing in the world.

Unfortunately, the Biden Administration has failed to show the leadership necessary on the spectrum front. While America stands still, our global competitors and adversaries are passing us by. Historically, the U.S. has been a leader in making new spectrum bands available. But a study out last year shows that the U.S. now ranks 13th out 15 leading marks in licensed mid-band spectrum. Indeed, in recent years, China has sprinted out to a 710 MHz advantage over the U.S. when it comes to licensed mid-band spectrum.

²⁵ See Testimony of Brendan Carr, Commissioner, Federal Communications Commission, Before the Subcommittee on Communications Technology of the United States House of Representatives Committee on Energy and Commerce, *Oversight of the Federal Communications Commission* (June 21, 2023). <https://docs.fcc.gov/public/attachments/DOC-398705A1.pdf>.

The Biden Administration does not have a serious plan to close this widening gap. Last November, it released its much-anticipated National Spectrum Strategy. But the 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—but it also marks a departure from our own recent record of action.

Of course, the Administration's failure to free up spectrum is not the only headwind when it comes to U.S. leadership in wireless. In March 2023, the FCC's spectrum auction authority lapsed for the first time ever. Refilling our spectrum pipeline and restoring our auction authority is a challenge that this Committee understands well and has been doing good work to try and resolve.

As long as our auction authority is lapsed, we should be working aggressively to deliver wins on the spectrum actions that we do have at our disposal. Here too, though, the Biden Administration is failing to deliver.

Just last week, the FCC missed a statutory deadline that Congress set in the 2015 Spectrum Pipeline Act to auction 30 MHz of spectrum below 3 GHz by July 1, 2024. That spectrum miss flows from the Biden Administration's failure to hit a January 1, 2022 deadline for identifying the specific spectrum for the auction. That failure is troubling for two reasons. First, Congress gave the Department of Commerce a runway of nearly nine years to prepare a relatively small portion of spectrum for commercial use. Second, even as the FCC's general auction authority lapsed, the Pipeline Act still would have allowed the FCC to auction that 30 MHz of spectrum.

It did not have to be that way. 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. I am confident that the agency can do so again. And reversing the Biden Administration's backsliding

on spectrum would not only generate billions of dollars in revenue for the Treasury that could be used for deficit reduction but also restore America's place as a global leader in wireless.

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In closing, I want to thank you again Chair Latta, Ranking Member Matsui, and Members of the Subcommittee for holding this hearing and for the opportunity to testify. I welcome the chance to answer your questions.