

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *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.

Last year, after Elon Musk acquired Twitter and used it to voice his own political and ideological views without a filter, President Biden gave federal agencies a greenlight to go after him. During a press conference at the White House, President Biden stood at a podium adorned with the official seal of the President of the United States, and expressed his view that Elon Musk “is worth being looked at.”¹ When pressed by a reporter to explain how the government would look into Elon Musk, President Biden remarked: “There’s a lot of ways.”² There certainly are. The Department of Justice, the Federal Aviation Administration, the Federal Trade Commission, the National Labor Relations Board, the U.S. Attorney for the Southern District of New York, and the U.S. Fish and Wildlife Service have all initiated investigations into Elon Musk or his businesses.

Today, the Federal Communications Commission adds itself to the growing list of administrative agencies that are taking action against Elon Musk’s businesses. I am not the first to notice a pattern here. Two months ago, *The Wall Street Journal* editorial board wrote that “the volume of government investigations into his businesses makes us wonder if the Biden Administration is targeting him for regulatory harassment.”³ After all, the editorial board added, Elon Musk has become “Progressive Enemy No. 1.” Today’s decision certainly fits the Biden Administration’s pattern of regulatory harassment. Indeed, the Commission’s decision today to revoke a 2020 award of \$885 million to Elon Musk’s Starlink—an award that Starlink secured after agreeing to provide high-speed Internet service to over 640,000 rural homes and businesses across 35 states—is a decision that cannot be explained by any objective application of law, facts, or policy.

First, the FCC revokes Starlink’s \$885 million award by making up an entirely new standard of review that no entity could ever pass and then applying that novel standard to only one entity: Starlink. In particular, FCC law provides that a winning bidder like Starlink must demonstrate that it is “reasonably capable” of fulfilling its end of the bargain that it struck with the FCC back in 2020. In this case, that means Starlink needed to show that it was more likely than not that Starlink could provide high-speed Internet service (specifically, low-latency, 100/20 Mbps service) to at least 40% of those roughly 640,000 rural premises by December 31, 2025. Starlink did exactly that in a voluminous series of submissions that it filed with the FCC throughout 2021 and 2022. Indeed, the record leaves no doubt that Starlink is reasonably capable of providing qualifying high-speed Internet service to the required number of locations by the end of 2025. The Commission’s decision does not even grapple with that evidence—it simply ignores it.

Instead of applying the traditional FCC standard to the record evidence, which would have compelled the agency to confirm Starlink’s \$885 million award, the FCC denied it on the grounds that

¹ Press Conference, White House State Dining Room, Remarks by President Biden (Nov. 9, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/11/09/remarks-by-president-biden-in-press-conference-8/>

² *Id.*

³ Editorial Board, *The Harassment of Elon Musk*, WSJ.com (Sept. 22, 2023), https://www.wsj.com/articles/elon-musk-biden-administration-justice-department-investigations-acdd84a?mod=article_inline.

Starlink is not providing high-speed Internet service to all of those locations today.⁴ What? FCC law does not require Starlink to provide high-speed Internet service to even a single location today. As noted above, the first FCC milestone does not kick in until the end of 2025. Indeed, the FCC did not require—and has never required—any other award winner to show that it met its service obligation years ahead of time.

To the extent the Commission is intending to say that the agency does not believe, standing here today, that Starlink is reasonably capable of meeting its year end 2025 obligation by year end 2025, the agency's position fares no better.

For one, the FCC is still holding Starlink to a standard that it has made up on the fly. I am not aware of any other circumstance in which the FCC has looked at current speed benchmarks to determine whether an awardee is reasonably capable of meeting a speed benchmark that kicks in years down the road. Indeed, if the FCC were to apply this novel Starlink speed test standard to any of the other 2020 awardees, it would show that those entities are not reasonably capable of meeting their 2025 obligations either because they have not built out to those areas yet. Applying a speed test to those providers would show speeds of 0/0 Mbps.

For another, the FCC makes a fundamental error because the speed test data it relies on is not sufficiently probative. In other words, the FCC might be saying in its decision that it *needs* to apply a novel standard to Starlink because it is the first low-earth orbit (LEO) satellite system to win an FCC award. Putting aside the admission in that case that the agency *is* applying a novel standard, the speed test evidence the agency relies on to make its prediction about how Starlink's LEO system will perform at the end of 2025 is flawed. Indeed, the FCC is not applying a standard that makes any sense for Starlink's LEO system.

This is an important point. The FCC is purporting to make a prediction about the trajectory that Starlink's LEO system is on, but it is not using any evidence that is tailored to making such a prediction. I am not saying that this is an easy task for the agency—it does involve rocket science after all. But comparing speed test snapshots from two, cherry-picked moments in time and using those to predict how Starlink would likely perform years down the road and at particular U.S. locations is not a credible methodology. That would be like watching the pace lap of a NASCAR race and then predicting that the cars will never exceed 50 MPH.

In the case of technologies like Starlink's LEO system, progress is not measured in a straight line, particularly not one that can be plotted by drawing an arrow through two speed test measures. The FCC knows this. It is more accurate to think about technological progress in this context as a saw-toothed, hockey curve—there are ups and downs, breakthroughs and setbacks, but the curve moves steadily up and to the right over any considerable period of time.

That is certainly the case with Starlink. Indeed, all of the data that has come in—the latest set of U.S. speed test measures, Starlink's actual performance in Europe, the pace and cadence of new launches and satellites in orbit, Starlink's own detailed descriptions of its plans—this much richer and more probative set of data all confirm that Starlink is on track to meet its FCC obligations.⁵

⁴ See, e.g., Order on Review at para. 30; see also *id.* at para. 24. The Agency found that Starlink's long-form application review process "required a more thorough examination of required service in 'specific areas' where [Starlink] won support" essentially requesting performance testing early-on from Starlink. *Id.* at para. 25.

⁵ Notably, at the time of the FCC's initial decision in August 2022, there were 3,007 Starlink satellites in orbit. Today, that number has expanded to 5,420. Moreover, among European countries that Ookla recently surveyed, Starlink now has median download speeds greater than 100 Mbps in 14 countries.

Second, the FCC’s decision leaves rural communities stuck on the wrong side of the digital divide. As noted above, in exchange for awarding Starlink \$885 million back in 2020, the FCC secured a commitment for the delivery of high-speed Internet service to over 642,000 unserved rural homes and businesses across 35 states. By reversing course, the FCC has chosen to vaporize that commitment and replace it with . . . nothing. That’s a decision to leave families waiting on the wrong side of the digital divide when we have the technology to get them high-speed service today.

Third, the FCC’s decision hits Americans in their pocketbooks. To the extent the federal government ever makes another commitment to serve these rural communities, it will cost us orders of magnitude more money to do so. Indeed, while the Commission’s 2020 award secured a deal to bring high-speed service to all of these areas for \$885 million in federal support, extending high-speed fiber lines to these same areas will likely cost somewhere in the neighborhood of \$3 billion based on past bidding patterns and analysis—more once you start accounting for inflation. That is not a good deal for U.S. taxpayers.

The problems only compound from there. After all, there is a limited pot of federal infrastructure dollars, and we are now far more likely to exhaust those resources before getting every American connected.

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Stepping back for a moment—it is clear that today’s decision simply does not hang together when measured against the law, facts, or policy. Indeed, I think it’s obvious to everyone that the Biden Administration itself does not believe that Elon Musk’s Starlink is a risky technology. If it did, you would not have seen the Pentagon ink a multi-million-dollar agreement with SpaceX just weeks ago for a military adaptation of Starlink, known as Starshield, that leverages LEO satellites for a more secure communication network.⁶ But the government continues to take regulatory action against his businesses, nonetheless.

In the end, today’s decision mirrors many of the same missteps that the Biden Administration is making in its implementation of other, multi-billion-dollar infrastructure initiatives. The Biden Administration is choosing to prioritize its political and ideological goals at the expense of connecting Americans. We can and should reverse course.

But that is not what the agency chooses today. Accordingly, I dissent.

⁶ David E. Sanger & Eric Lipton, *The White House May Condemn Musk, but the Government Is Addicted to Him*, nytimes.com (Nov. 19, 2023), <https://www.nytimes.com/2023/11/19/us/politics/elon-musk-white-house-pentagon.html>.