

DISSENTING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking (August 28, 2024)

In 2020, the Commission adopted an order establishing the 5G Fund for Rural America—a \$9 billion effort to extend next-generation wireless service to communities across the country. The plan was to start the 5G Fund auction in 2022 and for builds to be underway today.¹ In adopting this plan, the Commission placed particular emphasis on getting the timeline and sequencing right. Specifically, we ensured that the 5G Fund would move forward only after providers knew the results of the then-current fixed broadband funding initiative, known as the Rural Digital Opportunity Fund or RDOF. After all, coordinating the two efforts would lead to synergies for providers and taxpayers alike.

A lot has changed since 2020. As relevant to today’s decision, the federal government has opened the spigots wide open for broadband funding. In 2021, most notably, President Biden tasked Vice President Harris with leading the Administration’s signature \$42 billion plan—the Broadband Equity, Access, and Deployment or BEAD program—to extend Internet infrastructure to millions of Americans. Today, more than 1,000 days since BEAD was enacted, not one person has been connected to the Internet by that program. Indeed, not even one shovel worth of dirt has been turned. And it gets worse. The Administration now says that BEAD deployment will not start until sometime next year at the earliest.

The fact that the Administration’s \$42 billion BEAD program has gone off the rails is a problem for many reasons. For one, Americans have been left waiting on the wrong side of the digital divide for no reason. For another, the \$42 billion program—for better or worse—now serves as the country’s foundational broadband funding initiative. Everything else the government does from a broadband infrastructure funding perspective will, by definition, be built on top of BEAD. But BEAD is a faulty foundation. Indeed, there is not even a clear timeline by which we will know when exactly the \$42 billion will flow. Nor is there any strategy in place to coordinate the federal government’s various broadband funding efforts that are now spread across 15 different agencies and more than 130 funding programs. It is a recipe for overbuilding and wasteful duplication, as the GAO itself has warned.²

And that brings us to today’s FCC decision, which restarts the process of conducting the \$9 billion 5G Fund. As a threshold matter, I cannot support today’s decision because it puts the cart before the horse. Unlike our 2020 decision, which aligned with RDOF funding decisions, the Commission is moving forward today before the results of the Administration’s \$42 billion BEAD program are known.

There are two main problems with the FCC’s decision to barrel ahead today. First, it is never wise to build on top of a faulty foundation. So the government’s focus today should be on fixing the fundamental flaws with BEAD and getting that program back on track. I have already identified some

¹ See *Establishing a 5G Fund for Rural America*, Report & Order, 35 FCC Rcd 12174, at paras. 11-15 (2020); *id.* at Statement of FCC Commissioner Brendan Carr (“For a start, [the 5G Fund] builds off of other successful programs, since providers can use existing support to build fixed networks that support 5G. For example, a provider that receives RDOF funding to build out a network could use their previous investment to submit a lower bid in the 5G Fund auction.”); see also Keynote Remarks of FCC Commissioner Brendan Carr, The American Enterprise Institute, *Extending America’s 5G Leadership* (Mar. 15, 2021) (discussing the plan to commence the 5G Fund auction in 2022), <https://docs.fcc.gov/public/attachments/DOC-370781A1.pdf>.

² U.S. Government Accountability Office, *Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide*, GAO-22-104611 (May 31, 2022) (2022 GAO Report), <https://www.gao.gov/assets/gao-22-104611.pdf>.

low-hanging fruit in this regard: Eliminate the BEAD program’s DEI requirements, climate change agenda, unlawful price controls, technology preferences, and the wish list of progressive policy goals that have nothing to do with quickly connecting Americans. Second, the FCC is proceeding without synchronizing the 5G Fund with BEAD. Assuming we get BEAD back on the rails, lining up the two programs’ timelines is the only way to ensure that they work with—rather than against—each other.

Moving ahead now with the 5G Fund, without knowing the results of BEAD, will lead to the same types of problems that have plagued the Biden-Harris Administration’s other broadband funding initiatives: more overbuilding, more duplication, and less efficient use of taxpayer dollars.

For starters, the results of BEAD—something not expected until 2025 or 2026 at the earliest—will play a key role in the 5G Fund’s success. In particular, BEAD funding decisions will inform rational bidding by would-be participants in a 5G Fund reverse auction. Although BEAD subsidizes fixed broadband, it offers promising synergies and potential overlap with the 5G Fund, much like RDOF before it. Indeed, BEAD funds will support fiber backhaul, fixed wireless, and other infrastructure projects that are part and parcel of a mobile broadband network. Wireless carriers can stretch each 5G Fund dollar further—and rationally commit to offer mobile broadband service for less money—if they know where these BEAD funds are flowing, for what technology, and to what ISP. The potential savings from leveraging BEAD investments to deploy 5G are estimated to range from 59% to 83%.³

On the other hand, moving ahead with a 5G Fund auction now, before BEAD results are known, would blindfold carriers to the state of future deployment, increase the risk of stranded investment, and raise per-location costs. The risk of stranded investment, in particular, could increase how much money carriers would be willing take to serve a location. Some carriers might forego bidding altogether in locations unserved by mobile broadband—an outcome that would run headlong against our shared goal of connecting Americans. And exorbitant per-location costs caused by stranded investments would deplete the 5G Fund sooner than expected. This is to say nothing about the risk that prematurely running a 5G Fund auction might lead to duplicative funding by subsidizing wireless infrastructure slated to be built with BEAD money. Carriers will think twice if they believe they will be overbuilt.

You do not have to take my word for it. Large and small providers alike have urged the FCC to exercise restraint before moving ahead with the 5G Fund, for many of the same reasons I outlined above.⁴ Think about that. The very companies who stand to benefit financially from the 5G Fund have asked the FCC to proceed more slowly to account for BEAD. Likewise, a bicameral letter from members of Congress recently observed that “it is imperative to fully understand where [BEAD] investments will be directed before carriers can meaningfully participate in any 5G Fund auction.”⁵

Now, to be sure, today’s Order acknowledges these concerns and assures us that the FCC will engage in robust federal coordination before moving ahead with a 5G Fund auction. I appreciate that. But the Order stops far short of ensuring that the 5G Fund will align with key BEAD milestones. In fact, the Order expressly rejects the concerns of wireless carriers and members of Congress that moving ahead

³ See Letter from Angela Simpson, Competitive Carriers Association, to Marlene Dortch, Secretary, FCC, GN Docket No. 20-32 (Mar. 21, 2024).

⁴ See, e.g., Letter from Sean Lev, Counsel to Competitive Carriers Association, to Marlene Dortch, Secretary, FCC, GN Docket No. 20-32, at 18 (Aug. 2, 2024); Letter from Amy Bender, CTIA, to Marlene Dortch, Secretary, FCC, GN Docket No. 20-32 (Apr. 25, 2024); Letter from Brian Hurley, ACA Connects, to Marlene Dortch, Secretary, FCC, GN Docket No. 20-32, at 1 (Apr. 8, 2024).

⁵ Letter from the Hon. Robert E. Latta, et al., to Jessica Rosenworcel, Chairwoman, FCC, at 1 (Apr. 24, 2024), <https://docs.fcc.gov/public/attachments/DOC-403860A1.pdf>.

with the 5G Fund now would be premature. Plus, there is only so much the FCC can do on this front when the Biden-Harris Administration has refused to adopt a national coordinating strategy for broadband funding programs, even though the GAO recommended that it do so years ago.⁶ So, while I appreciate the FCC's assurances that it intends to proceed cautiously, the evidence to date shows that the Administration has more interest in grabbing headlines than doing the actual work necessary to bridge the digital divide. I am concerned that this trend will only continue. I hope I am wrong.

For now, I respectfully dissent.

⁶ See 2022 GAO Report.