

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

In the Matter of
Application for Review of
Starlink Services, LLC
Rural Digital Opportunity Fund
Rural Digital Opportunity Fund (Auction 904)
Viasat Auction 904 Application for Review
File No. 0009395128
WC Docket No. 19-126
OEA Docket No. 20-34
GN Docket 21-231

ORDER ON REVIEW

Adopted: December 1, 2023

Released: December 12, 2023

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez; Commissioners Carr and Simington dissenting and issuing separate statements.

I. INTRODUCTION

1. By this Order on Review, we deny an application for review submitted by Starlink Services, LLC (Starlink). Starlink seeks review of a decision by the Wireline Competition Bureau (WCB or Bureau) that denied its application to be authorized to receive broadband deployment subsidies from the Rural Digital Opportunity Fund (Auction 904).

1 See Application for Review of Starlink Services, LLC, WC Docket No. 10-90 (filed Sept. 9, 2023) (Starlink AFR). We review applications for review of action taken on delegated authority pursuant to section 5(c)(4) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. § 155(c)(4).

2 See Rural Digital Opportunity Fund Auction Support for 80 Winning Bids Ready to Be Authorized, Bid Defaults Announced, AU Docket No. 20-34 et al., Public Notice, DA 22-848, at 8-11 (WCB/OEA Aug. 10, 2022) (11th RDOF Ready to Authorize/Defaults Public Notice). Consistent with our denial of Starlink’s AFR, we dismiss as moot Viasat’s motions to (1) hold Starlink’s AFR in abeyance, see Motion of Viasat, Inc. to Hold Proceeding in Abeyance, for Protective Order, and for Other Procedural Rulings, WC Docket Nos. 19-126 et al., File No. 0009395128 (filed Sept. 20, 2022) (Viasat Motion) and (2) oppose Starlink’s AFR, see Initial Opposition of Viasat, Inc. to Application for Review of Starlink Services, LLC, WC Docket Nos. 19-126 et al, File No. 0009395128 (filed Sept. 26, 2022) (Viasat Opposition). Finally, we dismiss as moot Viasat’s previous AFR which sought a “reaction” of all of the areas where Starlink was the winning bidder and sought to allow Viasat’s own low earth orbit satellite constellation to bid in the auction to provide low latency service. Application of Viasat, Inc. for Review of Auction 904 Eligibility Determination, AU Docket No. 20-34 (filed Jan. 29, 2021) (Viasat AFR). Because this order concludes the potential disbursement of funds in the areas where Starlink was the winning bidder, Viasat’s request for a reaction is moot.

II. BACKGROUND

2. In January, 2020, the Commission announced the Rural Digital Opportunity Fund Auction (RDOF), a multi-round, reverse, descending clock auction that favored faster services with lower latency to ensure that the greatest possible number of Americans would be connected to the best possible networks, all at a competitive cost.³ Providers who could offer service at higher speeds and low latency could receive more funding to provide service in a given area.⁴ To ensure that the providers who ultimately received support in a given area were able to provide the service they committed to offering, the Commission required auction participants to undergo a two-phased application process.⁵

3. Before the auction began, all potential bidders were required to submit “short-form applications,” which required the potential bidder “to establish its eligibility to participate in the auction by providing, among other things, basic ownership information and certifying to its qualifications to receive support.”⁶ The review of short-form applications was meant to determine whether “the applicant has the legal, technical, and financial qualifications to participate in the” auction,⁷ but the information required in the short-form application was “high-level,” in recognition of the need to “balance[] the objectives of determining whether an applicant is expected to be reasonably capable of meeting the relevant performance requirements in the areas where it plans to bid with minimizing the burdens on applicants and Commission staff.”⁸ For example, when submitting its short-form application, a prospective bidder was required to identify the states in which it intended to bid, but not the total number of locations within each state where it intended to bid.⁹

4. After the completion of the auction, winning bidders were required to submit “long-form applications” which provided “extensive information detailing their respective qualifications in their long-form applications, allowing for a further in-depth review of their qualifications prior to authorization of support.”¹⁰ Additionally, as part of the long-form application, winning bidders were required to demonstrate how they would provide the required service in the specific areas covered by their winning bids,¹¹ as opposed to the more general, high-level showing on the short-form application.¹² Winning

³ *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686 (2020) (*Rural Digital Opportunity Fund Order*).

⁴ *Id.* at 688, para. 5.

⁵ *Id.* at 717-18, paras. 67-68.

⁶ *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, 6098, para. 63 (2020) (*Auction 904 Procedures Public Notice*).

⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6088, para. 27 (“The short-form application is the first part of the Commission’s two-phased auction application process. In the first phase, eligibility to participate in the auction is based on an applicant’s short-form application and certifications.”).

⁸ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, 6101, paras. 66, 71. *See also id.* at 6124, para. 123 (“the information we collect at the short-form application stage is designed to determine at a high level, and based on the totality of circumstances and the information submitted in the application that the applicant has developed a reasonable preliminary design or business case for meeting the public interest obligations for its selected performance tier and latency combinations and is thus expected to be reasonably capable of meeting those public interest obligations”).

⁹ *Id.* at 6091, para. 41.

¹⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 725, para. 86.

¹¹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6167, para. 301.

¹² *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 66. *See also Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6100, para. 68 (“We expect it would be burdensome for applicants to provide enough detail at the short-form application stage and for Commission staff to review the information and make eligibility

(continued....)

bidders were required to show that they were both financially and technically qualified; a failure to establish qualifications on either of those factors was grounds for denial of the long-form application.¹³

5. Bureau staff conducted an in-depth review of long-form applications both for completeness and compliance with the Commission's rules *and* to determine whether an applicant was financially and technically qualified for support.¹⁴ If the Bureau determined after reviewing a long-form application that it needed more information to make such a determination, it notified the long-form applicant that additional information was required.¹⁵ If a long-form applicant was found ineligible or unqualified to receive support, the applicant was announced as in default and subject to forfeiture.¹⁶

6. An applicant was deemed technically and financially qualified for support if the Bureau determined, after evaluating the information submitted with the long-form application, that the “applicant [was] reasonably capable of meeting its RDOF auction obligations,”¹⁷ with a particular focus on meeting the public interest obligations in the “specific areas” covered by the applicant's winning bids.¹⁸ The

(Continued from previous page) _____

decisions for smaller areas than a state, particularly when the applicant may not know exactly where in a state it will bid, much less win support. Such a review is better suited for the long-form application, where a long-form applicant is required to provide detailed network information *for the areas covered by its winning bids*) (emphasis added).

¹³ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 720-21, para. 77.

¹⁴ *Id.* at 722, 725, paras. 79, 86 (noting that the long-form application process “will provide an in-depth extensive review of the winning bidders’ qualifications” and that long-form applicants “are required to submit extensive information detailing their respective qualifications in their long-form applications, allowing for a further in-depth review of their qualifications prior to authorization of support”). See also *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6112, para. 97 (explaining the Commission's expectation that “the more in-depth long-form application process will further minimize the risk of authorizing an unqualified applicant”); *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, 13895, para. 18 (2020) (*Auction 904 Closing Public Notice*) (“Timely submitted applications will be reviewed by Commission staff for completeness and compliance with the Commission's rules and to determine if the long-form applicant has demonstrated that it is technically and financially qualified to fulfill its Rural Digital Opportunity Fund public interest obligations if authorized to receive support.”).

¹⁵ *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13895, para. 18 (explaining that the Commission “will notify a long-form applicant if additional information is required”). See also *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6168, para. 303 (“If a long-form applicant submits a technology and system design description that lacks sufficient detail to demonstrate that the long-form applicant has the technical qualifications to meet the relevant Rural Digital Opportunity Fund obligations, the long-form applicant will be asked to provide further details about its proposed network.”); 47 CFR § 54.804(b)(viii) (requiring long-form applicants to submit “[s]uch additional information as the Commission may require”).

¹⁶ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6178, para. 321. See also *id.* at 6116, para. 108 (noting “an applicant will be deemed in default if at the long-form application stage, Commission staff determines the applicant is not reasonably capable of meeting the public interest obligations associated with its winning bids”); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735, para. 114; *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13895, para. 18 (explaining that “[i]f a long-form applicant ultimately fails to provide all the required information or demonstrate that it is technically and financially qualified, [the Bureau] will release a public notice identifying the applicant and the winning bids that are considered in default”).

¹⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, para. 64.

¹⁸ *Id.* See also *id.* at 6124, para. 125 (noting the importance of having “more information about exactly where [an] applicant will win support and how many locations it will serve” in making a determination regarding an applicant's ability to meet the public interest obligations). A long-form applicant is also required to certify it is “financially and technically qualified to meet the public interest obligations for Rural Digital Opportunity Fund support *in each area for which it seeks support.*” 47 CFR § 54.804(b)(2)(ii) (emphasis added).

Commission also emphasized the importance of having “more information about exactly where [an] applicant will win support and how many locations it will serve” in making a determination regarding an applicant’s ability to meet the public interest obligations.¹⁹ The Commission defined reasonably capable to mean meeting the Commission staff’s “reasonable expectation” that the applicant would be able to meet the relevant public interest obligations in the areas where the applicant won support.²⁰

7. Put simply, the Commission made it clear that there was a different level of review for the short-form and long-form applications. As opposed to a more generalized, high-level review of the short-form application, long-form application review focused specifically on whether the winning bidder made a sufficient showing of its technical and financial ability to serve the specific areas where it won support. Accordingly, a “determination at the short-form stage that an applicant is eligible to bid for a performance tier and latency combination would not preclude a determination at the long-form application stage that an applicant does not meet the technical qualifications for the performance tier and latency combination and thus will not be authorized to receive Rural Digital Opportunity Fund support.”²¹

8. When it established procedures for Auction 904, the Commission considered categorically excluding low earth orbit (LEO) satellite providers from applying to bid to offer low-latency services, noting that it was unaware of any real-world examples of LEOs providing the low-latency service that RDOF’s low-latency service tier required.²² Ultimately, the Commission allowed LEO providers to apply to bid to provide low-latency service, but noted its concerns as to whether LEO providers would even be able to meet the short-form application requirements for bidding in the low latency tier.²³ In fact, the Commission specifically noted its concerns with “applicants that propose to use technologies that have not been widely deployed to offer services at high speeds or low latency, or have not been deployed at all on a commercial basis to retail consumers.”²⁴

9. The RDOF auction began on October 29, 2020, and ended on November 25, 2020. On December 7, 2020, WCB and the Office of Economics and Analytics (OEA) announced that there were 180 winning bidders in the auction and established the deadlines for winning bidders to submit their long-form applications for Rural Digital Opportunity Fund support.²⁵ Winning bidders had the opportunity to assign some or all of their winning bids to related entities by December 22, 2020.²⁶ All winning bidders that retained their winning bids and all related entities that were assigned winning bids were required to submit long-form applications by January 29, 2021.²⁷ On February 18, 2021, WCB and OEA announced

¹⁹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6124, para. 125.

²⁰ *Id.* at 6099, para. 64.

²¹ *Id.* See also *id.* at 6174-75, para. 312 (“A long-form applicant must also describe how the required construction will be funded in each state. The description should include the estimated project costs for all facilities that are required to complete the project, including the costs of upgrading, replacing, or otherwise modifying existing facilities to expand coverage or meet performance requirements. The estimated costs must be broken down to indicate the costs associated with each proposed service area at the state level and must specify how Rural Digital Opportunity Fund support and other funds, if applicable, will be used to complete the project. The description must include financial projections demonstrating that the long-form applicant can cover the necessary debt service payments over the life of any loans.”).

²² *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6118, para. 111.

²³ *Id.*

²⁴ *Id.* at 6112, para. 98.

²⁵ *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 (WCB and OEA 2020) (*Auction 904 Closing Public Notice*).

²⁶ *Id.* at 13890-91, paras. 9-14.

²⁷ *Id.* at 13892-93, para. 16.

that there were 417 long-form applicants.²⁸

10. Despite the fact that it had only just recently started offering mass-market service using a nascent LEO satellite technology in the early stages of deployment, SpaceX, Starlink's parent company, bid in the first round of the auction for \$15,999,984,230 of 10-year support to deploy 100/20 Mbps low-latency service to 2,590,563 locations in 49 states.²⁹ At the conclusion of the auction, SpaceX was the winning bidder for \$885,509,638.40 in 10-year support to deploy 100/20 Mbps low-latency service to 642,925 locations in 35 states.³⁰

11. After the auction, SpaceX assigned its winning bids to its wholly-owned subsidiary, Starlink.³¹ Starlink timely filed its long-form application for support on January 29, 2021, and submitted, among other items, an attachment with its technology and system design description, as required of all applicants, by February 15, 2021.

12. In April 2021 and May 2021, the Bureau spoke with Starlink about the numerous financial and technical deficiencies the Bureau had identified in Starlink's application. Starlink submitted to the Bureau a response attempting to address these identified issues in January 2022, and submitted additional information in February 2022. The Bureau spoke with Starlink about continuing concerns with Starlink's technical and financial deficiencies in March 2022 and April 2022. In these calls, the Bureau explained the deficiencies to Starlink and answered Starlink's questions about program requirements. Starlink followed up with written responses in June 2022 and July 2022. Finally, on June 3, 2022, the Bureau sent a formal letter to Starlink (June 3rd Letter) that described the Starlink application's deficiencies and provided Starlink a final opportunity to demonstrate its qualifications for support.³² Among other things, the Bureau asked Starlink to explain why its network performance was below the required minimum speeds of 100/20 Mbps {[REDACTED]}.³³ Starlink's response was due by July 5, 2022. On July 1, 2022, Starlink notified the Bureau that it had submitted revised financial and technical documents to explain its network deployment plans in the states covered by its winning bids in response to the June 3rd Letter.³⁴

13. After reviewing all of the information submitted by Starlink, the Bureau ultimately concluded that Starlink had not shown that it was reasonably capable of fulfilling RDOF's requirements to deploy a network of the scope, scale, and size required to serve the 642,925 model locations in 35 states for which it was the winning bidder. On August 10, 2022 the Bureau sent Starlink a letter informing Starlink of its conclusions.³⁵

²⁸ *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, Public Notice, 36 FCC Rcd 4140 (WCB and OEA Feb. 18, 2021) (*Auction 904 Long-Form Applicants Public Notice*).

²⁹ FCC Auctions Public Reporting System, <https://auctiondata.fcc.gov/public/projects/auction904>.

³⁰ *Id.*; *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, Attach. A (2020) (*Auction 904 Closing Public Notice*).

³¹ *Auction 904 Long-Form Applicants Public Notice*.

³² Letter from Trent Harkrader, Chief, Wireline Competition Bureau, to Bret Johnsen, Chief Financial Officer, Starlink Services, LLC (June 3, 2022) (June 3rd Letter).

³³ Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

³⁴ Email from David Finlay, Starlink Services, LLC to Zachary Ross, Legal Advisor, Wireline Competition Bureau (July 1, 2022 20:45 EDT).

³⁵ Letter from Trent Harkrader, Chief, Wireline Competition Bureau, to Bret Johnsen, Chief Financial Officer, Starlink Services, LLC (Aug. 10, 2022) (Bureau Letter). A Public Notice announcing that Starlink was in default was released concurrently. See *11th RDOF Ready to Authorize/Defaults Public Notice*. The August 10th Letter provided an in-depth explanation of the Bureau's decision.

14. Starlink now seeks Commission review of the Bureau's decision and requests that the Commission reverse the Bureau's decision by finding that Starlink is reasonably capable of meeting its performance obligations in its winning bid areas, order the Bureau to approve Starlink's long-form application as to those states where it has submitted proof of ETC status, and grant Starlink's request for waiver of the deadline to submit evidence of ETC designations in those states where it has yet to receive such designation.

III. DISCUSSION

15. For the reasons explained below, we affirm the Bureau's decision to deny Starlink's long-form application.

16. We deny Starlink's request that the Commission reverse the Bureau's denial of its long-form application for RDOF support. Starlink makes several arguments as to why the Bureau's decision should be reversed. It argues that: (1) the Bureau disregarded Commission policy and the long-form application review process by applying heightened scrutiny to Starlink's long-form application; (2) the Bureau's denial of the long-form application was contrary to the evidence, erroneous, and unreasonable; (3) the Bureau ignored the role of RDOF's Letter of Credit requirement; and (4) the Bureau ignored and implicitly denied Starlink's request for a waiver of the ETC designation deadline.³⁶ We discuss each argument in turn.

17. Awarding USF support requires a balancing of potentially competing interests, and that balance is achieved by following the specific guidelines the Commission has previously issued. We are also mindful that our limited USF funding ultimately comes from individual ratepayers, and when evaluating "a proper balancing inquiry," we "must take into account our generally applicable responsibility to be a prudent guardian of the public's resources"³⁷ by ensuring that USF funding is used efficiently to provide much-needed, reliable service throughout the Nation.

18. After careful review, we find that the Bureau followed Commission guidance and correctly concluded that Starlink is not reasonably capable of offering the required high-speed, low-latency service throughout the areas where it won auction support.

19. *The Bureau Applied the Correct Standard of Review.* Starlink first argues that the Bureau disregarded Commission policy by denying Starlink's long-form application "because it was not 100% certain that [Starlink] could meet [RDOF's] requirements,"³⁸ instead of assessing whether Starlink was "reasonably capable" of meeting its obligations as a winning bidder.

20. In support of its contention that the Bureau disregarded Commission policy and the long-form review process, Starlink argues that because its short-form application to bid to offer high-speed, low-latency services was approved, which allowed Starlink to participate in the auction, the Commission had already essentially concluded that Starlink was reasonably capable of meeting its obligations in the areas where it ultimately won support,³⁹ and the Bureau's decision was an impermissible reversal of that decision. Starlink also argues that it was held to an inappropriately onerous standard, and that the Bureau improperly relied on the Commission's pre-auction skepticism over allowing LEO providers to bid to offer low-latency services.⁴⁰ We disagree.

³⁶ Starlink AFR at 3.

³⁷ *High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 29 (2010).

³⁸ Starlink AFR at 8.

³⁹ Starlink AFR at 8.

⁴⁰ Starlink AFR at 8 (citing Bureau Letter at 1-2).

21. Starlink’s argument fails to account for the differences between the short-form and long-form application review processes, and would collapse any distinction between the two. Starlink’s argument also ignores the express warning in the *Auction 904 Procedures Public Notice* that a “determination at the short-form stage that an applicant is eligible to bid for a performance tier and latency combination would not preclude a determination at the long-form application stage that an applicant does not meet the technical qualifications for the performance tier and latency combination and thus will not be authorized to receive Rural Digital Opportunity Fund support.”⁴¹

22. By approving Starlink’s short-form application, the Bureau concluded that, based on the high-level information required in the short-form application, Starlink was reasonably capable of offering, at some level, the required service in at least one relevant area in each of the states in which it was approved to bid. Because short-form applicants did not identify how many areas within a state they would bid on, the approval of a short-form application cannot be viewed as approving the specific, more comprehensive service plans that a long-form applicant ultimately submitted.⁴² As the Commission explained when announcing the auction procedures, such an approval would not be feasible after the short-form review process, because finding that an applicant was likely to meet its public interest obligations and, therefore, have its long-form application approved, would require “more information about exactly where the applicant will win support and how many locations it will serve.”⁴³ That information was only provided in the long-form application.

23. In the *Auctions 904 Procedures Public Notice*, the Commission also specifically explained for its short form application review that its “approach of requiring high-level information that is sufficient for determining eligibility to bid in a state, requiring applicants to make certifications regarding their due diligence and ability to meet the performance requirements, requiring a more thorough long-form application technical showing for the areas where support is won, and imposing a forfeiture for defaults if an applicant is not deemed qualified to be authorized, more appropriately balances the objectives of determining whether an applicant is expected to be reasonably capable of meeting the relevant performance requirements in the areas where it plans to bid with minimizing burdens on applicants and Commission staff.”⁴⁴

24. The long-form application review process, in contrast to the high-level short-form application review process, required a more thorough examination of all relevant material to determine whether Starlink could provide the required service in the “specific areas” where it won support.⁴⁵ Put differently, rather than a generalized assessment of whether a short-form applicant could provide the required service, at some level, in each state where it wished to bid, the long-form application review determined whether the applicant could provide that service “associated with its winning bids,” i.e., in each of the areas where it ultimately won support.⁴⁶

25. Accordingly, the rejection of Starlink’s long-form application is not inconsistent with the approval of Starlink’s short-form application. Consistent with the more thorough review required by the long-form application review process, Bureau staff sent Starlink multiple, detailed inquires laying out its

⁴¹ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 64.

⁴² *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6101, para. 71 (noting the different standards of review between the short-form, which requires examining “high-level information that is sufficient for determining *eligibility to bid in a state*” and the long-form, which requires “a more thorough [] technical showing for the areas *where support is won*”) (emphasis added).

⁴³ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6124, para. 125.

⁴⁴ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6101, para. 71.

⁴⁵ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6099, para. 64.

⁴⁶ *Id.* at 6116, para. 108.

specific questions and concerns which Starlink did not adequately answer.⁴⁷

26. Starlink next argues that the Bureau misinterpreted the Commission’s initial concerns about allowing LEOs to bid to offer low-latency and Gigabit service to mean that the “Commission was generally skeptical of LEO satellite systems meeting download/upload speed requirements in any tier,”⁴⁸ and that, as a result, the Bureau impermissibly applied heightened scrutiny to Starlink’s long-form application. We disagree.

27. Starlink’s argument mischaracterizes the Bureau’s decision. While the Bureau briefly acknowledged the Commission’s skepticism that LEOs would be able to offer low-latency service in its Denial Letter,⁴⁹ that skepticism was not the basis for the Bureau’s decision. When the Bureau undertook a more thorough examination of Starlink’s technical capacity, as required by the long-form application process, the Bureau concluded that Starlink would not be able to meet RDOF requirements in the areas where it was the winning bidder. In its letter, the Bureau concluded that “a number of unresolved issues and their associated risks preclude Starlink from demonstrating that it is reasonably capable of meeting its RDOF auction obligations in the areas where it has winning bids.”⁵⁰ This was not a “presumption of default” as Starlink claims; rather, the Bureau examined the totality of the evidence Starlink submitted, including its long-form application and supplemental material, and concluded that Starlink was not reasonably capable of offering the required service.

28. *The Bureau Reasonably Found Starlink to Be Unqualified to Receive Support.* Starlink next argues that the Bureau’s decision was “contrary to the evidence, erroneous, and unreasonable,” and that Starlink “clearly demonstrated that it was reasonably capable, from both technical and financial perspectives, of meeting its RDOF obligations”⁵¹ We address Starlink’s arguments regarding its technical and financial showings in turn, and we affirm the Bureau’s decision.⁵²

29. *Technical Capability.* Starlink argues that the Bureau erroneously concluded that Starlink was not reasonably capable of offering the required service in the areas where it won support because of Starlink’s technical limitations,⁵³ and that the Bureau should not have relied on Ookla speed

⁴⁷ Bureau Letter at 6.

⁴⁸ Starlink AFR at 8.

⁴⁹ Bureau Letter at 6.

⁵⁰ Bureau Letter at 6.

⁵¹ Starlink AFR at 9.

⁵² In a footnote, Starlink makes a cursory argument that its Fifth Amendment right to due process was violated. Starlink AFR at 9 n.13. We disagree. Starlink was afforded ample due process in the review of its long form application. As noted above, staff engaged in discussions with Starlink for over a year about the deficiencies in its application, the Bureau sent a detailed letter to Starlink explaining concerns about the application, and then the Bureau issued Starlink an extensive letter explaining its decision. See Bureau Letter; June 3rd Letter. This extensive, over year-long iterative process was in accord with the program requirements and standards, was based upon the risks entailed in Starlink’s proposal to deploy a novel technology to the vast service areas for which Starlink itself had chosen to seek subsidies, and provided Starlink ample notice of the Bureau’s concerns. Moreover, Starlink filed an application for review, which herein has been addressed. Starlink was well afforded due process in this program, it was not deprived of a protected property interest, and its rights under the Fifth Amendment were not violated. Additionally, as we discuss in more detail above, see *supra* paras. 25-28, the Bureau did not disregard the “reasonably capable” standard that the Commission established. Finally, the Bureau’s decision did not deprive Starlink of a protected property interest, because the approval of Starlink’s short-form application, which allowed Starlink to bid in the auction, did not guarantee that Starlink would be able to ultimately receive support. As the *Auction 904 Procedures Public Notice* made explicit, the “determination that an applicant is qualified to participate in Auction 904 does not guarantee that the applicant will also be deemed qualified to receive support if it becomes a winning bidder.” 35 FCC Rcd at 6088-89, para. 27.

⁵³ Starlink AFR at 10-15.

tests from 2021 and 2022 to predict what Starlink’s service offerings would have been in 2025, when it would have been required to start offering service in the areas where it won RDOF support.⁵⁴

30. We disagree with Starlink’s arguments. First, the technical and predictive judgments made by the Bureau are compelled by the long-form review process, which required a determination of whether Starlink would be able to meet its RDOF obligations. While Starlink faults the Bureau for relying on the most recent available data at the time of its decision to evaluate its existing network performance,⁵⁵ Starlink does not explain what other data source the Bureau should have used in lieu of using the most recently available data. When the Bureau’s decision was made, the most recent available evidence showed that “Starlink’s performance had been declining for download speed, upload speed, and jitter test performance.”⁵⁶ In other words, it was not only failing to meet the RDOF public interest obligations, but also trending further away from them. Starlink also asserts that {[REDACTED]}. But Starlink provides no details {[REDACTED]}. In any event, that does not change the fact that the relevant data indicated declining network performance and thus gave the Bureau a reasonable concern that Starlink would ultimately not be able to meet its RDOF obligations.

31. Starlink argues that the Bureau should not have relied on speed-test data when denying Starlink’s long-form application because it claims that it will {[REDACTED]} and that {[REDACTED]}. However, we cannot rely on this assertion, and, as we discuss in more detail below, the Bureau ultimately disagreed with Starlink’s projections and {[REDACTED]}. For the same reasons, the Bureau could not accept Starlink’s argument that {[REDACTED]}. Unlike fiber or other technologies currently in use, Starlink did not point to examples where its technology was providing service at the required level in the United States. Starlink only argued that it would be able to meet the required RDOF obligations by 2025; evaluating this claim required the Bureau to use the best available data to make a predictive judgement. In addition, there were no other relevant LEO networks offering widespread service in the United States to verify Starlink’s claims that it would be able to meet the Commission’s requirements. In sum, the Bureau correctly relied upon the most relevant speed test data in its assessment and made appropriate predictive judgements based on the information available at that time of its decision. We agree that such information did not demonstrate that Starlink would be reasonably capable of meeting its RDOF obligations.⁶¹

⁵⁴ Starlink AFR at 10-11.

⁵⁵ Starlink AFR at 11.

⁵⁶ Bureau Letter at 7.

⁵⁷ Starlink AFR at 12.

⁵⁸ Starlink AFR at 11.

⁵⁹ See *infra* para. 34.

⁶⁰ Starlink AFR at 10.

⁶¹ We note, on our own motion, that Starlink’s most recent publicly available performance data reportedly shows a slight decline in performance after a previous report indicated that its performance data had improved in the United States. See <https://www.ookla.com/articles/us-satellite-performance-q3-2023> (noting that in the United States “Starlink recorded a median download speed of 64.54 Mbps in Q3 2023, a marginal decline quarter-on-quarter, but

(continued....)

32. On a more granular level, the Bureau {[

After carefully reviewing the information that Starlink submitted, the Bureau concluded that {[

] For these reasons, we agree with the Bureau and believe this conclusion is supported by the record.

33. In its response to the Bureau’s technical questions, Starlink laid out its future deployment plans.⁶⁶ {[

] At the time of the Bureau’s decision, Starship had not yet been launched. Indeed, even as of today, Starship has not yet had a successful launch; all of its attempted launches have failed. Based on Starlink’s previous assertions about its plans to launch its second-generation satellites via Starship, and the information that was available at the time, the Bureau necessarily considered Starlink’s continuing inability to successfully launch the Starship

(Continued from previous page) _____ still an increase over the 53.00 Mbps it recorded in Q3 2022.”). Even if the performance had improved, though, that still would not demonstrate an ability to meet RDOF’s performance standards, and it also does not show how Starlink would meet its RDOF obligations to a significantly larger customer base. Accordingly, the newer data does not change our conclusions about whether Starlink was reasonably capable of meeting its RDOF obligations in the area where it won support.

⁶² Bureau Letter at 7.

⁶³ Starlink AFR at 5, n.6, 12-14.

⁶⁴ Starlink AFR at 13 (citing its “Overview of Technical Questions and Responses” at 17).

⁶⁵ See *infra* para. 33. See also Letter from William M. Wiltshire, Counsel, SpaceX, to Karl Kensinger, Chief, Satellite Division, International Bureau, FCC, IBFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105, at 5 (filed Jan. 7, 2022), available at https://licensing.fcc.gov/myibfs/download.do?attachment_key=14456966 (Starlink Jan. 7 Letter) (explaining that Starlink had “reached a point in the development of its Starship launch vehicle and Gen2 satellites that it can concentrate solely on Configuration 1 and no longer pursue Configuration 2”). As referred to in the letter, Configuration 1 refers to launching Gen 2 satellites via Starship, while Configuration 2 refers to launching those satellites via Falcon 9. See Amendment filed by William M. Wiltshire, Counsel, SpaceX IBFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Aug. 18, 2021) at 1 (“Configuration 1 fully leverages the upgraded satellite capabilities and the availability of Starship, bringing significantly increased capability to deliver satellites to orbit. Configuration 2 provides an alternative that also leverages the capabilities of the reliable Falcon 9 rocket.”) (Gen 2 Amendment Narrative).

⁶⁶ Overview of Technical Questions and Responses at 17, table.

⁶⁷ Overview of Technical Questions and Responses at 17, table.

⁶⁸ *Id.*

⁶⁹ See *supra* note 64.

rocket when making predictive judgements about its ability to meet its RDOF obligations.⁷⁰ We also agree with the Bureau's ultimate conclusions that the uncertain nature of Starship's future launches could impact Starlink's ability to meet its RDOF obligations.

34. Starlink further asserts that even assuming {{ [REDACTED]

}}

35. {{ [REDACTED]

}}

36. {{ [REDACTED]

}}

⁷⁰ Only after the release of the Denial Letter did Starlink make a public statement that it would use the Falcon 9 rocket to launch second-generation satellites. <https://spacenews.com/spacex-adds-falcon-9-back-to-second-gen-starlink-launch-plan>.

⁷¹ Overview of Technical Questions and Responses at 3.

⁷² *Id.*

⁷³ *Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, IBFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105, Order and Authorization, 37 FCC Rcd 14882, 14912, para. 46 (2022) (“We therefore condition this authorization, consistent with SpaceX’s commitment on the record of this proceeding, such that SpaceX must operate its Gen2 Starlink constellation with an NCo of 1, in the 12.2-12.7 GHz (space-to-Earth) frequency band. In other words, *SpaceX may not use more than one satellite beam from any of its authorized Gen2 Starlink satellites in the same frequency in the same or overlapping areas at a time.*”) (emphasis added).

⁷⁴ Starlink Jan. 7 Letter.

⁷⁵ Overview of Technical Questions and Responses at 3.

37. *Financial Capability.* Because we agree with the Bureau's conclusions that Starlink did not show that it was technically capable of meeting its RDOF obligations, we affirm the Bureau's denial of Starlink's long-form application on that basis alone. We therefore do not address all of Starlink's arguments that the Bureau erred when determining that Starlink was not financially capable of meeting its RDOF obligations. We disagree, however, with Starlink's argument that the Bureau erred by ignoring the role that a letter of credit (LOC) plays in determining the financial health of a long-form applicant.⁷⁶ While the Commission did identify an auction winner's ability to obtain an LOC as a relevant factor when evaluating that auction winner's long-form application,⁷⁷ obtaining an LOC was not the sole factor to be considered when reviewing a long-form application. The Commission made clear that the long-form application must include other relevant financial information⁷⁸ beyond simply a long-form applicant's ability to obtain an LOC. There would be no point to require the submission of such information if the Bureau was not allowed to assess it and was only permitted to consider the existence of an LOC to determine an applicant's financial qualifications.

38. *The Bureau Was Not Obligated to Address Starlink's ETC Waiver Request.* Finally, Starlink argues that the Bureau ignored or implicitly denied its request for waiver of the ETC designation deadline.⁷⁹ Because we ultimately affirm the Bureau's decision that Starlink was not reasonably capable of providing the required service in the areas where it was the winning bidder, we do not need to address this argument.

IV. ORDERING CLAUSES

39. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 4(i), 4(j), 5(c), and 254(h) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and 254(h), and sections 1.3, 1.115, and 54.722 of the Commission's rules, 47 CFR §§ 1.3, 1.115, and 54.722, and the rules set forth in the *Auction 904 Procedures Public Notice*, that the Application for Review filed by Starlink, LLC on September 9, 2022 is **DENIED**.

40. **IT IS FURTHER ORDERED**, that the Motion to Hold Proceeding in Abeyance, for Protective Order, and for Other Procedural Rulings filed by Viasat, Inc. on September 20, 2022 is **DISMISSED AS MOOT**.

41. **IT IS FURTHER ORDERED**, that pursuant to sections 1.3 and 1.115 of the Commission's rules, 47 CFR §§ 1.3, 1.115, that the waiver of the Application for Review service requirements filed by Starlink, LLC on September 9, 2022 is **GRANTED**.

42. **IT IS FURTHER ORDERED**, pursuant to sections 4(i), 4(j), 5(c), and 254(h) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and 254(h), and sections 1.3, 1.115, and 54.722 of the Commission's rules, 47 CFR §§ 1.3, 1.115, and 54.722, that the Application for Review filed by Viasat, Inc. on January 29, 2021 is **DENIED**.

⁷⁶ Starlink AFR at 22.

⁷⁷ *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6098-99, para. 64.

⁷⁸ *Id.* at 6174-75, para. 312.

⁷⁹ Starlink AFR at 23-25.

43. **IT IS FURTHER ORDERED** that this Order on Review **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**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.”⁸⁰ When pressed by a reporter to explain how the government would look into Elon Musk, President Biden remarked: “There’s a lot of ways.”⁸¹ 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.”⁸² 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

⁸⁰ 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/>

⁸¹ *Id.*

⁸² 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.⁸³ 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.⁸⁴

⁸³ 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.

⁸⁴ 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.

* * *

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.⁸⁵ 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.

⁸⁵ 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>.

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

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.*

I wholeheartedly agree with the entirety of Commissioner Carr’s dissent. I write separately to further highlight some of the meretricious logic that underlies the Bureau’s, and now Commission’s, rescinding of SpaceX’s RDOF award.

The fundamental issue is that the majority is impermissibly holding SpaceX to its 2025 RDOF targets three years early, in 2022. In 2020, the Bureau accepted SpaceX’s short-form application and winning bid to use a first-of-its-kind mass-market low Earth orbit (LEO) broadband service to deliver high-speed, low-latency internet to specified areas by 2025. But in August 2022, based on Ookla speed test data—data that in fact demonstrated the tremendous success of the Starlink system in delivering high-quality service to the most difficult-to-serve areas—the Bureau decided to rescind SpaceX’s award. It concluded that because SpaceX had not yet met the 2025 speed and latency goals, and as it was using a new kind of system and could not point to others using similar technology to meet such targets, it was not reasonably capable of meeting that goal.

What good is an agreement to build out service by 2025 if the FCC can, on a whim, hold you to it in 2022 instead? In 2022, many RDOF recipients had deployed *no* service at *any* speed to *any* location at all, and they had no obligation to do so. By contrast, Starlink had half a million subscribers in June 2022 (and about two million in September 2023). The majority’s only response to this point is that those other recipients were relying on proven technologies like fiber, while SpaceX was relying on new LEO technology. But the Commission knew that LEO-based service was new when it allowed LEO providers to participate in RDOF and when it accepted SpaceX’s short-form application. So that cannot be a reason to change the rules in the middle of the game and hold SpaceX to a 2025 goal in 2022. Furthermore, SpaceX’s technology *is* proven. The proof is the millions of subscribers—many in areas that other providers and the FCC have failed to serve for decades—already receiving high-quality broadband service through Starlink. And SpaceX continues to put more satellites into orbit every month, which should translate to even faster and more reliable service.

To justify its motivated reasoning, the majority points to delays in the development of SpaceX’s Starship launch platform—the largest, most powerful rocket ever built—as evidence that SpaceX would be unable to launch enough Starlink satellites to meet its 2025 commitments. The trouble with this argument is that SpaceX never indicated that it was relying on the Starship platform to meet its RDOF obligations, and in fact it repeatedly stated that it was not. Undeterred by the facts, the Commission now resorts to twisting SpaceX’s words. For example, SpaceX said in a letter to the Commission that it had “reached a point in the development of its Starship launch vehicle and Gen2 satellites [such] that it *can* concentrate solely on Configuration 1 and no longer pursue Configuration 2” (emphasis added). Configuration 1 involves launching with Starship, and Configuration 2 involves launching with Falcon 9. Nothing in this sentence suggests that SpaceX *needed* Starship to launch Gen2 satellites, but that’s exactly the interpretation that the majority now relies on. Rather, the sentence says that because the Starship program was going well, SpaceX would be *able* to use it for that purpose. As a previous SpaceX letter—also quoted by the majority—says, “Configuration 2 provides an alternative that also leverages the capabilities of the reliable Falcon 9 rocket.” Of course, Starship did not turn out to be ready in time, but exactly as those letters suggest, SpaceX has nonetheless launched over fifteen hundred Gen2 satellites using the Falcon 9 rocket and now has over five thousand satellites in the Starlink system overall.

I was disappointed by this wrongheaded decision when it was first announced, but the majority today lays bare just how thoroughly and lawlessly arbitrary it was. If this is what passes for due process and the rule of law at the FCC, then this agency ought not to be trusted with the adjudicatory powers Congress has granted it and the deference that the courts have given it.