



NEWS

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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STATEMENT OF COMMISSIONER AJIT PAI ON THE PUBLIC NOTICE OF THE WIRELINE COMPETITION BUREAU ADDRESSING E-RATE MODERNIZATION

Now is the time to get moving with E-Rate reform. Whether you call it a student-centered E-Rate program, E-Rate 2.0, the ConnectED Initiative, or E-Rate modernization, our teachers and students need real reform of the 18-year-old E-Rate program. As I said back when the Commission commenced this proceeding: “We should not tinker around the edges. We should shoot for the moon. And we should aim to win.”¹

And yet, I fear that the Public Notice issued by the Wireline Competition Bureau yesterday bodes poorly for real reform.² Reform should mean eliminating the priority system that arbitrarily favors some technologies over others. Yet the Public Notice doubles down on it.³ Reform should mean abolishing the discount matrix that encourages wasteful spending by well-funded districts and consistently underfunds small, rural schools and libraries. Yet the Public Notice builds on it.⁴ And although the Public Notice mentions streamlining the administrative process, the proposals to do so (such as making “simple changes” to the existing forms or changing “invoicing deadlines”)⁵ are overwhelmed by proposals that would saddle our nation’s teachers and librarians with more paperwork.⁶

¹ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11477 (2013) (Statement of Commissioner Ajit Pai).

² Wireline Competition Bureau Seeks Focused Comment on E-Rate Modernization, WC Docket No. 13-184, Public Notice, DA 14-308 (Wireline Comp. Bur. 2014) (Public Notice).

³ See, e.g., *id.* at 5–8, paras. 10–23 (seeking comment on “allocating annually a set amount of E-Rate funds” for a subset of priority 2 services); *id.* at 16, para. 47 (seeking comment on a new tier of “support for voice services under a lower priority”).

⁴ See, e.g., *id.* at 8, para. 21 & App. A (seeking comment on using the discount matrix to “set [priority 2] funding levels for each applicant); *id.* at 9, para. 28 (seeking comment on raising the discount rate, already at 90 percent for some applicants, an additional 10 percent if used for deployment); *id.* at 10, para. 31 (seeking comment on prioritizing applications for deployment costs based on the discount matrix).

⁵ *Id.* at 12, para. 38; *id.* at 12, para. 39.

⁶ See, e.g., *id.* at 7, para. 17 (noting the need for new “safeguards” given new incentives applicants may have “to inflate their original requests in their first year of eligibility”); *id.* at 11, para. 32 (seeking comment on requiring applicants to “calculate the total number of students currently in buildings without infrastructure capable of meeting Commission-adopted speed goals”); *id.* at 12, para. 36 (seeking comment on requiring applicants to file technology plans).

Moreover, even if the right questions were posed, this is the wrong way to pose them. If the Commission needs to focus comment on an issue, we should advance a concrete proposal—which in the words of the FCC’s own process reform report “ensure[s] adequate notice of the potential final rule” and “focus[es] both drafters and commenters on the precise proposal under consideration.”⁷ And if the Commission wants to explore a new proposal, we should issue a further notice of proposed rulemaking to comply with the requirements of the Administrative Procedure Act.⁸ Either course requires Commission-level action since the Wireline Competition Bureau cannot propose new rules,⁹ which is why I requested that the item be placed on circulation as a Further Notice of Proposed Rulemaking for a Commission vote after I received it. The Bureau nevertheless issued the Public Notice, depriving Commissioners of an opportunity to weigh in on an issue that President Obama has described as “a new challenge for America—one that families, businesses, school districts and the federal government can rally around together.”¹⁰

Parents and students, teachers and librarians are counting on us to move forward with fundamental reform of the program, not just adding more complexity to a program that is already too complicated. With almost 1,600 comments in the docket, I believe that we cannot wait any longer—that we need real reform now. I said it when we adopted the NPRM and reiterate here: I stand ready to work with my colleagues, and soon, to adopt E-Rate reforms that bring the full promise of digital opportunity to America’s children. I hope that as the Commission moves forward, it gives Commissioners a full and fair opportunity for input and avoids the procedural pitfalls that can stand in the way of meaningful progress.

⁷ Report on FCC Process Reform from the Staff Working Group led by Diane Cornell, GN Docket No. 14-25, Recommendation 3.8 (Feb. 14, 2014), *available at* <http://go.usa.gov/KTAz>.

⁸ 5 U.S.C. § 553(b).

⁹ 47 C.F.R. § 0.291(e).

¹⁰ The White House, Office of the Press Secretary, President Obama Unveils ConnectED Initiative to Bring America’s Students into Digital Age, <http://go.usa.gov/KTPw> (June 6, 2013).