

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184.

This order represents a missed opportunity to comprehensively reform the E-Rate program to ensure that it meets the needs of students and library patrons in the 21st Century. The order spends a minimum of \$2 billion on the policy *du jour*—closing the so-called Wi-Fi gap—while largely neglecting the rest of the program. And it initiates this new spending spree without having first determined the long-term budget for the entire program. As a result, the shortsighted decisions today could lead to either a funding cliff for schools and libraries or higher phone bills for American ratepayers. Therefore, I must strenuously dissent for both process and policy reasons.

In my short time at the Commission, I have not publicly criticized process issues. Instead, I prefer to focus on substantive concerns, if any, and address internal procedure behind the scenes. Unfortunately, the process used for this item was unacceptable. Let me explain my frustration and disappointment. Before the item was even circulated, I held two briefings with Commission staff to understand the direction it was going. In response, I submitted big picture edits that respected their direction. Again, this was before the item circulated. I believe my proposed edits kept to my principles while still showing a great willingness to compromise. I then held two more meetings with Commission staff in which I explained my thoughts and concerns and sought their input on what was doable—all the while making clear that I wanted to get to “yes.” Weeks passed as I waited for a response. During that time, my staff and I were told to hold off on suggesting any further edits to the item until a new document could be circulated. That opportunity never came. Instead, late last night, I received a new document only to learn it would be a straight “NO” across the board for any of my edits and suggestions. A goose egg. No attempt was made to work out even the smallest of details. In the end, I never expected to get everything I proposed, but I don’t believe it is appropriate to refuse to negotiate with me just because I am a Republican appointee.

To be clear, I support E-Rate. It has been helpful in bringing telecommunications and Internet service to virtually all schools and libraries. That connectivity has expanded access to educational resources benefitting teachers and students. And it has enabled people that might not otherwise have Internet access to use it at a library to obtain information, apply for jobs, and perhaps even file a complaint or comment with the FCC.

Early on, I set forth my principles for E-rate reform: refocus the program on broadband by eliminating outdated services; keep within an overall USF budget so reform doesn’t come at a cost to consumers; leverage existing investment rather than overbuilding; increase matching requirements consistent with other programs; don’t oversupply; and overhaul program administration. Accomplishing reform within these broad guideposts should have been easily achievable. But today’s order rejects modifications based on these principles, defers others, and takes questionable half measures on the rest. And it does so in a brazen partisan fashion.

Fundamentally, I am concerned that this order shies away from comprehensive reform, even though the record is clear that such changes are long overdue. Promising to expand the scope now and reform the rest of the program later is a sleight of hand tactic that we see all too often in Washington, D.C. It is irresponsible. If we were serious about reforming the entire program, then why not at least put a serious proposal for the remaining reforms in the Further Notice rather than seek comment on an assortment of odds and ends and a budget increase. It is even more disturbing to hear informally that the justification for deferring the budget decision is to get the issue past the November elections. Obviously, the Commission is worried that Americans won’t like the budgetary effects of the changes we are considering on their pocketbooks, and therefore we have to slide them in after the election when they

can't do anything about it for a while. To me, this is a clear sign that we should reconsider the underlying decisions.

Relatedly, I disagree with the order's single-minded focus on Wi-Fi. While some schools and libraries may benefit from improved Wi-Fi access within the building, others still need connectivity *to* the building. Connectivity is still a necessary prerequisite. And demand for bandwidth will only increase—indeed, it could be intensified by making Wi-Fi more widely available. Yet we do not adequately address that here.

I am especially worried about initiating a new, perceived Wi-Fi entitlement without having a long-term plan, much less a sustainable one, for the entire program and USF spending. After two years, it's not clear whether funding will continue to be available for Wi-Fi. That's hardly the predictability that schools and libraries need. Or perhaps, by then, the majority of the Commission will have tried to ram through an increase in the E-Rate budget. If a justification can be made to increase the E-Rate budget, then that makes it even more imperative to establish an overall budget for USF so that consumers that pay fees on their phone bills to support USF are not further burdened by the FCC. Instead, I am very troubled that we will be told to look the other way and just increase the contribution factor even more. And if we consider it here, I fully expect that there will be calls to increase contributions for the other programs too. I stand ready to be corrected on this point, but it always seems easier for some people to take more money from the American people via higher taxes and fees rather than do the hard work. If more funding is necessary for E-Rate, let's dig in and find offsets, not stick it to hard-working poor and middleclass Americans.

In terms of the item specifics, let me just touch upon a few, although there are so many. First, I find the assumption for tying E-Rate support to libraries on a per foot basis to be one of the silliest policies I have ever seen. The size of a building is supposed to be the proxy measurement for how much subsidy a library should get? It makes as much sense as counting roofing tiles, toilets, or surrounding trees. I can't believe this is the best we can do.

Second, I'm mystified by the decision to increase the matching requirements, but only for internal connections and only for the poorest schools. That is completely backward. More skin in the game through higher matching rates is important for all discount levels so we can stretch E-Rate dollars further and promote greater efficiencies. Since we seem to agree that's a good policy, I don't understand why we wouldn't apply it across the board.

Third, I do not see where lowest corresponding price is reflected in the underlying statutory authority. The statute calls for a "discount," not the lowest price plus an additional discount. Congress is completely aware of how to establish a requirement to offer the lowest price, if it chooses to do so, as it did many years ago with lowest unit rate for political advertising. It did not do so in this instance, and therefore I am not in agreement with our current rules that suggest otherwise. While our interpretations may have been upheld, it's never too late to follow the statute. Moreover, this misguided policy has spawned unnecessary confusion, tying up funding while the Commission and USAC try to sort out how to apply it in practice. And now we are upping the enforcement ante.

Fourth is the assault on the Commission's competitive bidding process. The record made clear that competition in the program can dramatically reduce costs, allowing schools and libraries to make the most of their E-rate funds. While it may be true that avoiding competitive bidding could speed up timing, exempting services from these important requirements is also the way to install graft, fraud, waste, abuse, and criminal behavior. For a Commission that is supposedly focused on competition, this is a puzzling step backwards.

Last and most infuriating, the item delegates so much authority to the Bureaus and USAC to do almost whatever they would like, whenever they would like to do it. This is not a criticism of our professional staff, who are dedicated and hardworking, but rather I worry this mechanism is a way to remove accountability and bury decisions that should be made more public.

I thank the staff for their many briefings and only wish they were authorized to actually consider a balanced plan that we all could support. Perhaps next time we will have the opportunity to roll up our sleeves and work together in a bi-partisan manner to complete necessary reforms.