

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

Re: Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Connect America Fund, WC Docket No. 10-90.

For you educators out there, let me outline a basic premise: a person can support E-rate, E-rate modernization, and the good work of the panelists and yet not be in favor of this particular item. Sadly, this item makes the E-rate program more complex, less efficient, and potentially wasteful. Therefore, I cannot support it.

Chief among my many concerns is that the massive increase in the E-rate cap – an extra \$1.5 billion per year – is not offset by other reductions within the universal service fund. That means that the total fund will grow from over \$8 billion to nearly \$10 billion per year. On a single vote, we are subjecting consumers to higher phone bills. I have continued to advocate for an overall cap on the universal service fund as one means to keep spending in check. The fact that the Commission refuses to adopt one even now suggests that there are more spending sprees to come that will put us over the \$10 billion mark. This is completely unacceptable.

Having been in Washington D.C. for a considerable time, and having been part of a number of efforts that resulted in billions of expenditures, it still amazes me how some people find it so easy to give away others' hard earned income. It is usually couched with the notion that it's just a little bit more needed to produce some amazing outcome. But what if that little bit comes at the expense of a family cancelling phone service or being unable to buy the things they need?

I know we all come to the Commission with different backgrounds but what is getting lost with this item is a connection to economic circumstances faced by our poorer and middleclass Americans. If surveys are accurate, our fellow citizens are worried about their jobs and employment, mortgages and home prices, student loan debt, college costs for their kids, food prices, lack of retirement savings, and many other financial problems. In reality, these issues are not all solvable by the government, nor should they be, and most Americans don't expect the government to do so. But we shouldn't make their problems and concerns worse by adding new taxes and fees on their monthly expenses.

I am also very troubled by the continued lack of targeting within the program. In the summer, the Commission discovered a Wi-Fi gap and is committing billions of dollars to address it even though, as my travels around the country have confirmed, many schools and libraries do not actually need it.

Just a few months later, the Commission seemingly discovered a Rural Connectivity Gap and will be spending billions more. The fact that there's a gap should come as a shock to no one given that a key purpose of universal service for decades has been to extend connectivity to rural parts of the nation. It is even more embarrassing that the Commission still doesn't know where the gap is. As a result, funding will be provided to all comers and we'll cross our fingers that it finds its way to the right places. I hope that GAO will have the opportunity to review the impact of these new rules because I fear that these decisions will lead to untold waste of funding.

Even if the funding were better targeted to address these gaps, I would still be concerned with the smattering of reforms themselves. I am particularly concerned about the self-provisioning option, which could lead to overbuilding, and could ultimately jeopardize service to the community at large. I can think of several legitimate reasons why an applicant may not have received a bid. That doesn't mean that self-provisioning should be the next step. Parties put suggestions in the record about ways to identify these applicants and seek out nearby providers to see whether there truly is no interest in serving them. Those types of steps would at least help ensure that any self-provisioning funding is provided were it is truly needed. But those ideas were rejected.

Instead, as my colleague highlighted, the item places undue trust in certain "safeguards" to protect against waste. In particular, the item relies on a few procedures cherry-picked from the

Healthcare Connect Order, such as requiring that projects be bid more than one way and performing cost-effectiveness reviews. What it fails to mention is that we have very little experience to date with those safeguards. I was not here when they were established.

It also ignores the fact that the healthcare connect program is an order of magnitude smaller. I do not think that USAC will have the expertise or resources to perform these reviews for the E-rate program. And bulking up USAC will mean higher USF admin expenses, which means even higher USF fees for consumers. The E-rate program already has the highest admin expenses – three times as much as the next highest program.

Moreover, important safeguards from the *Healthcare Connect Order* were left out entirely, such as capping the funding available for construction. The reason seems to be that we don't know how much money will be needed. But that's all the more reason to put on a cap in the first place. Otherwise, we run the risk that there will not be sufficient funding for providing discounts on recurring charges – the statutory purpose of the E-rate program. The fact that USAC and the Bureau will have to report when certain spending levels are reached adds no value as the Commission is not bound to take any action in response. Or it could just raise the E-rate cap even more.

Another critical safeguard absent here is a sufficient matching requirement. In the *Healthcare Connect Order*, for example, the Commission set the match at 35 percent. But here, once again, the Commission refused to increase the matching requirements at all. Doing so would not only improve incentives for more efficient spending but also stretch dollars further within the program. In the summer, the Commission increased the matching requirement, but only for the poorest applicants. Rather than remedy this error by increasing the matching requirement for all applicants, this order would *reduce* it for applicants under questionable circumstances. That is, applicants would get a bonus if a state kicks in funding. That only serves to penalize applicants in fiscally responsible states. And the fact that states can already pay all of the non-discounted portion for applicants provides little comfort because that can create the wrong incentives in and of itself.

I am also disappointed that this order doubles down on another misguided decision from the prior order. I had warned that using a square foot calculation to set the Category 2 budgets for libraries was one of the silliest policies I had ever seen. Now the order seemingly discovers that urban libraries have a higher density of patrons needing Wi-Fi – the second most obvious “discovery” in this order. So the order resorts to increasing the urban library per foot budget, which further proves the foolishness of the new standard.

In addition, I want to highlight a new requirement that Connect America Fund recipients participate in the E-rate competitive bidding process and that the bid amounts meet national reasonable comparability benchmarks to be determined by the Bureau at a future date. In 2011, the Commission adopted an expectation – not a requirement – that CAF recipients provide higher bandwidth offerings at reasonably comparable rates. Earlier this year, the Commission sought comment on how to fulfill that expectation. But nowhere did it propose to convert the expectation to a requirement. Imposing a requirement now raises serious APA concerns and could have unintended negative consequences for the CAF program. At a minimum, the specific requirements being adopted today should have been put out for comment.

I will say that I am somewhat pleased that the Commission is acting on petitions for reconsideration to change the definition of rural to something more realistic. But I suggested that this be done months ago. And the reason we are in this situation at all is that the prior E-rate order was rushed and the Bureau, to whom we continue to delegate substantial authority, released an Erratum that locked in an unsound definition.

For those critics who argue it is the role of Republicans to find common ground, I would argue that I have gone out of my way to do so on this issue. It is hard to say with a straight face that I am the obstinate one after I outlined six very reasonable principles on E-Rate reform and this item violates all

six. Not one or two but all six. Compromise was thrown out long ago by the majority so particular groups critical of the last E-Rate item would no longer attack those flawed decisions.

To sum up my concerns: we will be spending a great deal of money without any meaningful safeguards to ensure that it is spent cost-effectively in places and on services that are truly needed. I dissent.