

**STATEMENT OF
COMMISSIONER ROBERT McDOWELL
APPROVING IN PART, DISSENTING IN PART**

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan For Our Future*, GN Docket No. 09-51, Report and Order.

When I think of the schools and libraries fund, I often think of my late father. He grew up on a ranch in northern Mexico near the Texas border during the “dustbowl” era of the Great Depression. My grandparents’ ranch house did not have electricity or phone service. Furthermore, my father did not have access to a school while living so remotely among the mesquite trees and the jack rabbits. On many evenings, my grandfather would take the battery out of the family’s Model A and hook it up to the radio in the house. Often this served as their only connection to the outside world. Despite these obstacles, however, through good fortune and hard work, my father went on to become a senior editor of *National Geographic* magazine.

Through his experience, I am reminded that many Americans have not been fortunate enough to overcome similar challenges. I also recognize that programs such as E-rate have been instrumental in keeping many of America’s schools and libraries connected to the outside world. The program’s success was highlighted in the National Broadband Plan, which indicated that 97 percent of American schools are connected to the Internet and that many of those schools have received support from E-rate funds.¹

In the spirit of carrying out Congress’ original mandate to us, I support the bulk of this Report and Order. For example, amending the Commission’s rules to permit schools to allow community use of E-rate funded services outside of school hours is a positive development. This change will allow E-rate funds to be leveraged in a manner that will encourage wider broadband use without increasing universal service distributions. During these challenging economic times, it is imperative that our government find ways to be as efficient as possible with our limited resources. Allowing for community use after school hours will help in that effort. In short, our action on this issue today will create efficiencies in a government program.

I am also encouraged that the Report and Order includes a section on streamlining and simplifying the administrative requirements of the application process. Hopefully, these changes will reduce confusion and increase efficiency as well. Additionally, I support the steps to improve safeguards against waste, fraud and abuse. We must always remember that the funds that support the E-rate program come from the contributions of hard-working American consumers. It is their money that we spend. As such, we must take every precaution necessary to earn their trust in the administration of this program.

There are, however, certain parts of this Report and Order that concern me. For example, I do not agree with the decision to raise the \$2.25 billion E-rate cap by indexing

¹ Federal Communications Commission, *Connecting America: The National Broadband Plan* at 20 (rel. Mar. 16, 2010).

it to overall inflation. Some consider this increase “offset” by recent “savings” captured in a previous Commission proceeding. Others argue that the cap increase for the upcoming funding year is minimal. Nonetheless, I have long advocated for overall comprehensive reform of the universal service system *in lieu* of piecemeal alterations, and therefore it makes more sense that any ideas for increasing caps should be debated more thoroughly in that forum.

Additionally, as recently as July 1 of this year, the Commission announced that the fund has retained \$900 million in unused money in excess of the existing cap.² In light of this, I question why the Commission is raising the cap when the fund has almost \$1 billion in left over cash. Again, we should always remember that we should be the prudent stewards of other people’s money.

Finally, even if the E-rate program had not been running a surplus, it is not clear to me why it is necessary to index it to inflation of the overall economy rather than inflation in the telecom sector specifically. When comparing the consumer price index for the economy as a whole against the prices for telecom services for the past decade, inflation in the telecom sector has remained essentially flat while the index for all other products and services has risen. This is the first time the E-rate cap has ever been raised, and tying it to a general inflation index may make future support of this program more difficult to achieve. The majority’s decision today is not supported by the evidence in the record and is not fiscally prudent. As such, I respectfully dissent from this portion of the Report and Order.

I was originally concerned about the section of the Report and Order that adds dark fiber to the Eligible Services List. For instance, some parties questioned how the competitive bidding process could ensure that arms-length transactions occur when government entities are competing against private businesses. Similarly, some commenters expressed concern that this change could create a competitive bidding process that might not treat all bidders fairly. Additionally, while some argue that this change would actually save money for the program over time, I questioned whether the change could have encouraged large upfront construction costs which, in some instances, could have caused other applications to go unfunded – particularly applications in rural parts of the country – a type of “crowding out” effect. I am thankful that in the past couple days the Chairman and his staff have made great strides to address these concerns in this order. As such, I am comfortable approving this section, especially because having access to competitive dark fiber may reduce costs to the fund. I recognize, however, that the implementation of the competitive bidding process may be complex, and I urge the Commission to keep a close eye on the process as it moves forward.

I do however dissent from the part of the Report and Order that establishes a trial program to support wireless Internet access offsite. I recognize that putting wireless technologies into the hands of students and teachers can be a powerful and exciting way to supplement our education system. Nonetheless, I am concerned that opening up this new spending line item may be far beyond what Congress originally intended when it

² *Public Notice, Wireline Competition Bureau Announces Carryover of Unused Schools and Libraries Universal Service Funds for Funding Year 2010*, CC Docket No. 02-6 (2010).

mandated subsidies for the wiring of schools and libraries to the Internet. Myriad questions abound that should be addressed in a further notice before launching such a trial.

In the absence of a Congressional directive to subsidize each student's wireless connectivity, the Commission should be more faithful to the mission we have been given. As noble an aspiration as it may be to wish for each student in America to enjoy the fruits of having access to the Internet at all times, we risk depleting E-rate funds when we stray from Congress' original intent. It would be unfortunate if the demands of new expenditure streams were to drain the reservoir of funds needed to accomplish the primary objective of the fund: connecting schools and libraries to the Internet. Furthermore, the pilot program is limited primarily if not exclusively to schools that already have existing wireless programs. Why? By definition, if such programs already exist in those areas, and are funded without our help, they do not need E-rate support.

Also, an offsite program could set up a system that could be virtually impossible to monitor and may lead to waste, fraud and abuse. For example, there may not be adequate ways to ensure compliance with the Children's Internet Protection Act. I also wonder how schools could ensure that the use of such devices would be for educational purposes, as Congress intended. It would be more prudent for the Commission to ask these questions, among many others, in a further notice, before launching a trial which may ultimately lead to an appetite for something that the Commission may not have the capacity to support on a larger scale.

In sum, I recognize the significant role programs such as E-rate play. But, the Commission should tread cautiously to ensure that any changes to the program do not cause it to eventually collapse under its own weight. The Commission should avoid veering away from its core mission as set forth by Congress.

I thank the Chairman, my colleagues, and their respective teams for their receptiveness in improving this item.