

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *BellSouth Telecommunications, LLC, d/b/a/ AT&T Southeast*, File No.: EB-IHD-14-00017954.

I fully support the decision to cancel this Notice of Apparent Liability and proposed forfeiture. The previous Commission's attempt to evade the applicable statute of limitations through its continuing violation theory was offensive to the rule of law and must be thoroughly rejected.

While I don't object to the decision to resolve this matter purely on procedural grounds, I would point out that the NAL was substantively defective as well; AT&T likely would have prevailed even if the claims against it weren't time-barred. According to the facts in the record, the two school districts in question chose to purchase services on a month-to-month basis directly from AT&T, rather than through the statewide consortium's multi-year contract. Requiring AT&T to charge those school districts the same rates charged to those buying services from the bulk consortium contract would be a misapplication of our "lowest corresponding price" rule, which prohibits service providers from charging E-Rate eligible entities a price above what they charge "similarly situated" non-residential customers for "similar services."

Flexible month-to-month service (which the two school districts indeed seemed to want, based on the record) is not "similar" to service provided through a fixed-length or multi-year contract. Further, a single school district is not "similarly situated" to a consortium that negotiates to purchase high-volume capacity over a long term. The two school districts could have chosen to purchase service through the consortium but, for whatever reason, chose instead to purchase service directly from AT&T. Finding that they can bypass the consortium (and its applicable fees for negotiating and administering the contract) and still be eligible for the consortium's bulk negotiated rates would confer an unfair advantage. Further, this would defeat the purpose of joining consortia in the first place, in turn undermining the Commission's policy of encouraging consortia and bulk purchasing in the E-Rate program.

I fully support our decision to rescind this flawed NAL and vote to approve.