

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Declaratory Ruling (October 19, 2023).

In March of 2021, when the United States, and the world at large, was still grappling with the COVID-19 pandemic, Congress passed the American Rescue Plan Act of 2021 (ARPA). That law included nearly \$7.2 billion for the FCC to establish a new Emergency Connectivity Fund (ECF). In contrast to Section 254 of the Communications Act, which is the statutory authority for the E-Rate program, ARPA expressly authorized the FCC to fund eligible equipment and services at locations “other than the school.” Here at the Commission, I worked with my FCC colleagues to maximize the impact that this program would have on connecting school kids, and I voted in favor of agency rules implementing that emergency program, including funding for Wi-Fi connectivity on school buses.

In addition to the emergency relief provided under the ARPA’s ECF, Congress allocated billions of additional dollars to other agencies since the start of COVID-19 that could be used for connecting school kids. Indeed, the Department of Education’s Elementary and Secondary School Emergency Relief Fund alone received approximately \$190 billion in total funding.

So when this item was placed on the agenda for this month’s open meeting, I asked some basic questions to understand what has worked with the billions of dollars already spent, what hasn’t, and what are some lessons learned for the funding of Wi-Fi on school busses. But the information was not there.

For example, the FCC has provided over \$60 million in ECF funds to provide Wi-Fi on school busses so far, but we lack an accounting of the number of students that have been connected or the ways in which these connections have been used. We apparently do not have any studies that measure the efficacy of this funding in terms of improved academic outcomes or that recommend ways that the initiative could be improved. It also appears that DOE does not track any useful metrics for the billions of dollars it has already sent out the door—not on the number of Wi-Fi-enabled school busses funded, not on the number of children connected, and not on the impact of all of those funds. I have previously sounded the alarm that a lack of coordination and accounting of federal broadband funding could result in significant waste and an inability to track the efficacy of federal spending. I am concerned that is what we are seeing here.

Given the lack of data, it strikes me that the agency’s decision-making process would benefit from seeking comment on some of these basic points. That is why I would have been willing to vote in favor of a Notice of Proposed Rulemaking today. I think the challenges here will only be compounded by proceeding directly to a declaratory ruling.

I am also concerned that we’re expanding the USF program into an entirely new funding area without addressing some of the fundamental contributions, disbursement, and oversight concerns that I and others have been raising for years now. We cannot continue to spend other peoples’ money in this way without a real conversation at this agency about reform. I have put ideas out there. I would welcome a discussion about paths forward.

I also have serious legal concerns with this decision. Ranking Member Cruz and Chair Rodgers recently reminded the Commission that, unlike ARPA and ECF, the FCC’s “E-Rate authority is explicitly confined to classrooms.”¹ And Congress is clearly aware of this limitation, as evidenced by the explicit

¹ See, e.g., Letter from Sen. Ted Cruz, Ranking Member, Senate Committee on Commerce, Science, and Technology, and Rep. Cathy McMorris Rodgers, Chair, House Committee on Energy and Commerce, to Hon.

provisions of ARPA that directed the Commission to extend funding beyond the school. Indeed, I am pretty confident that today's vote is just one step towards even further expansion in the not-too-distant future.

I am not being alarmist when I say this. Look no further than those who are calling on the FCC to take this action, including a recent statement from former FCC Chairman Tom Wheeler. In his words, "You've got to ask yourself the question, what is a school? And the school is where learning takes place. If that learning is in a classroom, or a study hall, or a school bus, the school is where learning takes place."

The problem with this Wheeler Wi-Fi plan is that it reads the express language Congress included in the statute right out of the Act. It shows that the plan has no limiting principle.

Those of us on the Commission today share so many common goals. But the FCC is not free to ignore the express limitations on our authority imposed by Congress—no matter how laudable the agency's intentions may be.

Accordingly, I am unable to support this item. I dissent.

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Jessica Rosenworcel, Chair, FCC (July 31, 2023). The text of the Communications Act is clear that, as relevant here, the agency's authority under Section 254(h)(2)(A) is limited to supporting the delivery of covered service to "public and non-profit elementary and secondary school classrooms." 47 U.S.C. § 254(h)(2)(A). Since the FCC is not limiting this decision to classrooms, today's order plainly exceeds the scope of the Commission's authority. To the extent that the Commission is relying Section 254(h)(1)(B) as support for today's decision, that reliance does not fare any better. Section 254(h)(1)(B) does not authorize the FCC to support, as relevant here, any service that the FCC says serves an educational purpose. Instead, Section 254(h)(1)(B) requires, in addition to a finding of educational purpose, that, as relevant here, the supported offering serves "elementary schools" or "secondary schools." The FCC makes no showing that its decision satisfies the Section 254(h)(1)(B) "schools" statutory gating requirement just like it does not satisfy the Section 254(h)(2)(A) "classroom" requirement.