

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Notice of Proposed Rulemaking (November 1, 2023).

The FCC's USF program faces a broader set of challenges today than at nearly any other point in its history. The contribution factor has skyrocketed above 30%. The USAC process is overdue for reform. And parties are challenging the lawfulness of the entire USF program in appellate courts across the country. The FCC does not make any of those issues easier to resolve with today's E-Rate decision.

Last month, the FCC took a first step toward expanding the Commission's E-Rate authority beyond the bounds set by Congress in Section 254 of the Communications Act. In my dissent, I warned that we would soon see additional efforts towards even further expansion. And here we are, just weeks later, with yet another item that seeks to rewrite Section 254 and overrule the choices Congress made when it codified the statute.

But do not misunderstand—that is a feature of this plan, not a bug. Those who are pushing for evermore expansion of E-Rate firmly believe that statutory terms such as school, library, and classroom no longer have any relevance in the current era of schooling. E-Rate funds should be spent wherever learning takes place, the argument goes. Indeed, today's NPRM seems to have replaced the schoolhouse with an “anytime/anywhere” approach in the “modern educational environment.” But the problem with this approach is that it reads the express language Congress included in the statute right out of the Act. And whatever one thinks about the modern educational environment, 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.

Additionally, I continue to be concerned that we're on track to expand 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. Furthermore, at a time when entire USF program is being challenged in court cases in multiple federal circuits, the FCC's continued steps to push beyond the bounds set by Congress in Section 254 will only make the FCC lawyers' tasks in those cases that much harder.

Ultimately, it is clear to me that the majority and I have a fundamental difference in the reading of the Commission's E-Rate authority in Section 254. Moreover, after the FCC moved forward with a declaratory ruling in the Wi-Fi on school busses proceeding last month—despite my request that the item be changed to a notice of proposed rulemaking to allow for public comment on significant factual and legal deficiencies in the item—the agency has already made the legal and policy cuts that it purports to tee up in this NPRM, relegating it to little more than a procedural nicety on the road to a decision that has already been made.

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