

**STATEMENT OF  
COMMISSIONER OLIVIA TRUSTY**

Re: *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Declaratory Ruling; *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Order on Reconsideration.

Ensuring that all Americans can access the benefits of advanced communications is one of my highest priorities. The issues raised by the *School Bus Wi-Fi Order* and the *E-Rate Hotspots Order* are significant. We need only look at Congress’s decision to establish the Emergency Connectivity Fund, a temporary program to provide broadband devices and services offsite from schools and libraries, to see how important these issues are.

With the Emergency Connectivity Fund now ended, the Commission must determine how to proceed. My support for both Orders today rests on my commitment to apply what I see as the best interpretation and application of the law.

As the Supreme Court has reminded us, “an agency literally has no power to act . . . unless and until Congress confers power upon it.”<sup>1</sup> And after *Loper Bright*, the Commission cannot approach statutory interpretation with a thumb on the scale in its own favor. Our role is to apply the law using the same ordinary tools that a court would.<sup>2</sup>

That doesn’t mean everyone will agree on what a statute requires. But in this position, I am bound to follow the law in each decision I make. In my judgment, the interpretation reflected in these orders best reflects the statutory text, its context, and the broader legal and regulatory framework. I recognize that some of my predecessors among others see the law differently. I respect their views and do not question their good faith. But I must act in good faith myself, based on what I believe is the best understanding of Congress’s direction.

The Commission has a special responsibility to adhere to the limits Congress has set when spending public money through the universal service fund. Under our constitution, Congress’s “power of the purse” is central to the system of checks and balances.<sup>3</sup> For us that means two things: first, that we must never exceed the limits Congress has placed on universal service support,<sup>4</sup> and second, that we must carefully evaluate the financial consequences of our decisions to ensure they are consistent with our statutory authority. In this way, we respect Congress’s constitutional role while fulfilling our own.

The Supreme Court’s recent decision upholding the constitutionality of the universal service fund reinforces my approach. Every universal service dollar ultimately comes from consumers, and the challengers in that case argued that Congress had failed to place sufficient limits on how the FCC spends those dollars. The majority disagreed, concluding that “[t]he policy” expressed in section 254 “is clear and limiting,” and any discretion exercised by the FCC must be “tethered to legislative judgments.”<sup>5</sup> Justice Gorsuch, in dissent, pointed to the very *Hotspots Order* before us as an example of unbounded

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<sup>1</sup> *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986).

<sup>2</sup> *Loper Bright Ent. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024).

<sup>3</sup> See, e.g., GAO, *Principles of Federal Appropriations Law*, 4th ed., 2016 rev., ch. 1, GAO-16-463SP, at p. 1-6, available at <https://www.gao.gov/assets/2019-11/675699.pdf>.

<sup>4</sup> See *id.* at pp. 1-23 - 1.24.

<sup>5</sup> *FCC v. Consumers’ Research*, 145 S. Ct. 2482, 2508 (2025).

FCC discretion.<sup>6</sup> My takeaway: staying firmly within the heartland of our authority both honors the majority’s reasoning and avoids the concerns that led the dissenters to a different conclusion.

This approach reflects not only my legal commitments but also my background working on Capitol Hill. Congress creates agencies like the FCC and defines their mandates. For government to work well, agencies must abide by those laws. In my view, the Commission risks missed opportunities when it attempts to go it alone rather than working collaboratively with Congress.

When the FCC goes it alone, it risks narrowing its focus. We have seen this before, as the Commission has sought to do more and more through universal service, even as the contribution base shrinks. Collaboration with Congress may not produce identical outcomes on identical timelines, but it could support modernized, more sustainable programs. It could also open the door to valuable dialog. For example, when Congress enacted the Emergency Connectivity Fund, it provided limited funding for a limited time.<sup>7</sup> And in 2024, Congress rescinded nearly \$1.8 million in remaining funds.<sup>8</sup> Congress clearly recognized the value of offsite support, but just as clearly chose to bring the program to an end. By proceeding alone, the Commission missed the chance to better understand Congress’s reasoning, insights that could have informed our statutory framework and program oversight.

Closing the digital divide requires an “all hands on deck” approach that also includes private industry. By working with the private sector, the Commission can broaden its thinking, learn from real-world experience, and pursue creative solutions beyond regulation alone, whether through infrastructure deployment of wired or wireless facilities, affordability initiatives, or digital literacy efforts. This kind of collaboration complements, rather than substitutes for federal programs like universal service.

I understand that not everyone will be satisfied with today’s outcome. But I want to be clear: I remain fully committed to addressing the digital divide and ensuring that all Americans share in the benefits of broadband connectivity. I thank the Wireline Competition Bureau for its hard work on these items, and I look forward to working with the Chairman and other Commission staff, with Congress, and with other public and private stakeholders in the collective effort this mission demands.

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In this written statement, I also want to take the opportunity to elaborate on a few of my views regarding the interpretation of section 254(h). As explained in the *Hotspots Reconsideration Order*, the best reading of the statutory text and context of section 254(h)(1)(B) limits support to services provided to eligible locations—namely elementary schools, secondary schools, and libraries. The *Hotspots Reconsideration Order* and *School Bus Wi-Fi Declaratory Ruling* also explain why the best interpretation of section 254(h)(2)(A) does not authorize the 2023 and 2024 decisions at issue here. In my view, today’s interpretations are further reinforced by the Commission’s historical approach to E-Rate, which has consistently focused on the location being served.<sup>9</sup>

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<sup>6</sup> *Id.* at 2531 (Gorsuch, J., dissenting).

<sup>7</sup> American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 7402 (2021).

<sup>8</sup> Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, § 639 (2024).

<sup>9</sup> *See, e.g., Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9209, para. 20 (2003) (*Schools and Libraries Second Report and Order*) (emphasizing that the clarification of the “educational purpose” standard remained “consistent with statutory mandates”—including section 254(h)(1)(B)—“that the purpose for which support is provided be for educational purposes in a place of instruction”); *Request For Review of the Decision of the Universal Service Administrator By Rockwood School District R 6 Eureka, Missouri, et al.*, 16 FCC Rcd 5277, 5278-79, para. 4 (CCB 2001) (using a location-focused approach in early decisions that cellular service would be eligible for discounts only

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By contrast, decisions sometimes cited as precedent for extending E-Rate support to offsite locations do not, in my view, establish that authority. For example, some of those orders do not directly address the interplay between the precedent being set and the statutory language in section 254(h) that is central to our analysis here.<sup>10</sup> Other precedent did not involve any additional E-Rate support for services to offsite locations.<sup>11</sup> And still another example appears to be limited to the location of the school itself.<sup>12</sup>

In sum, I believe the interpretation of section 254 reflected in these orders is the one most consistent with the statutory text, its context, and the broader legal and regulatory framework.

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when “1) provided for use at a place of instruction, and 2) used for an educational purpose,” and citing section 254(h)(1)(B)).

<sup>10</sup> See, e.g., *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, para. 19 & n.28 (stating that “reasonable requests for any supported service - over any technology platform - to be used by any school or library staff while in a library, classroom, or on school or library property, shall be eligible for discounts,” and going on to clarify that certain “offsite” uses of services nonetheless could fit the “educational purpose” standard, but without addressing the distinct criteria about whether and to what extent a “place of learning” must be involved – primarily, even if not exclusively); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, WC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18784-87, paras. 41-50 (2010) (*Schools and Libraries Sixth Report and Order*) (adopting a temporary pilot program without analysis demonstrating why the action was justified under the text of section 254(h)).

<sup>11</sup> *Federal-State Joint Board on Universal Service, Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, CC Docket No. 96-45, Order, 16 FCC Rcd 21511 (2001) (*Alaska Waiver Order*) (granting the state of Alaska a limited waiver to allow members of rural remote Alaskan communities to use E-Rate-funded satellite telecommunications and Internet services, when not being used by the schools, offsite where, among other things, the school or library has not requested more services than are necessary for educational purposes and no additional costs will be incurred).

<sup>12</sup> *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18778-79, paras. 31-32 (finding that it served an educational purpose to let residential schools that serve unique populations use E-Rate-funded services in the residential areas of those schools after hours).