DISSENTING STATEMENT OF COMMISSIONER NATHAN SIMINGTON

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 23-31, Report and Order and Further Notice of Proposed Rulemaking (July 18, 2024).

When reading this item, I had thought to quote Jacque's monologue from Shakespeare's *As You Like It* and liken the lines "All the world's a stage, and all the men and women merely players" to today's item: "All the world's a classroom, and all the schools and libraries merely funding conduits." But there is actually another line from that monologue on which I'd prefer to focus: "the whining schoolboy, with his satchel and shining morning face, creeping like snail unwillingly to school." Few children actively *enjoy* school, at least in its instructional aspects, and certainly I was little different. Memorization by rote, homework, tests—who has the time when there is life to be lived? I'm sure most of us can relate, though perhaps not my colleagues on the Commission: all, no doubt, more accomplished pupils than myself.

And why don't kids enjoy school? Because schools are sites of the sometimes boring and usually uncomfortable work of learning. Granted, the ambit of instruction has changed over time, to include the kitchen table, laptops, and even "third spaces." But the classroom does not stretch beyond the horizon into infinity. Not everywhere is a place for children to learn; some places are just for children to play. You may learn anywhere, but classrooms are not everywhere. And while we may kid ourselves that yonder loaned Wi-Fi hotspot is actually a hotbed of learning, I can promise you that, without actual site blocking akin to the Eyes on the Board Act, most of what is learned is going to be "off-menu" as it relates to the school curriculum. The item indicates that, rather than real usage safeguards, children using Wi-Fi hotspots will be governed by a clickwrap acceptable use policy posted on a bulletin board. That's interesting. As it happens, parents often have an "acceptable use policy" for their younger children for all kinds of things, zealously enforced, and yet their usage is often anything but acceptable.

But even if the item had incorporated some version of Eyes on the Board, which might draw students' usage of hotspots more in line toward legitimate uses related to instruction, I still couldn't support the item. We simply lack the authority to take the action we take today. Indeed, our gap-filler E-Rate authority, Section 254(h)(2)(A)—on which this item ought to be premised, even if erroneously—really isn't doing much of the load-bearing work. Section 254(h)(2)(A) provides that the Commission may act to promulgate rules to enhance access to "advanced telecommunications and information services" for "school classrooms and libraries." Tabling for one moment that off-campus Wi-Fi hotspots *obviously* will reduce incentives to physically show up in a classroom, the Commission is only authorized to enhance access *to school classrooms and libraries*. The last I checked, schools, which have classrooms, and libraries, are physical locations with addresses; not philosophical, conceptual ideas of instruction or education. So while it is easy to agree with the notion that children ought to be able to learn anywhere (stipulating to the premise that students will actually use the Wi-Fi hotspots for learning), it is not within the Commission's statutory authority to deliver on that goal by any means necessary. Indeed, when the Commission has argued this point, it has tried to distinguish between "for classrooms" and "in classrooms," indicating that while the latter might tie the Commission's hands as it relates to ubiquitous, global Wi-Fi connectivity, the former does not. Yet if a teacher purchases chalk *for* her classroom, where might you expect to find it? On the school bus? At a student's home? The argument would strike me as silly if it weren't so consequential.

Nor is the Commission's Section 254(h)(1)(B) authority, on which the item principally relies, up to snuff. To be very clear, that provision only relates to telecommunications services provided by telecommunications providers, and no more. Well, last I checked, that's not what a Wi-Fi hotspot is: at least, not yet. And, you'll have to pardon me, but I find the comments in the record supporting our 254(h)(1)(B) authority from the likely beneficiaries of E-Rate funding relatively unavailing on this point. I further disagree that our own precedent—*viz,* the 1997 Universal Service Order or its progeny—actually stands for the proposition cited. The 1997 Order largely centered authority in 254(h)(2)(A) rather than in 254(h)(1)(B) precisely because the Commission at the time recognized that it was limited by the terms of

the former provision to "telecommunications services" and "telecommunications carriers." The redshift of subsequent Commission decisions to expand the E-Rate program do not distort that truth.

At any rate, the heady days of *Chevron* are behind us and it's time for the Commission to get serious and start acting like its statute means what it says rather than means whatever it needs to mean in order to secure a desired policy outcome. For these reasons, I dissent.