

## FEDERAL JUDGE RULES IN FAVOR OF E-RATE PROGRAM WHISTLEBLOWER

On January 20, a Wisconsin federal judge ruled in favor of a private telecommunications auditor, Todd Heath, who filed a lawsuit claiming that Wisconsin Bell defrauded the federal E-Rate program by overcharging schools and libraries. The lawsuit was brought under the False Claims Act (FCA), a federal law encouraging whistleblowers to come forward when they discover “false claims” or fraud committed on the federal government.

The E-Rate program was established by the Telecommunications Act of 1996 to provide schools and libraries with subsidies needed to upgrade their telecommunications equipment and improve access to the Internet and related services. Here’s how [Propublica](#) described why the E-Rate program matters: “E-Rate was set up... at the dawn of the Internet era to avert a digital divide between rich and poor students by subsidizing telecommunications services to schools and libraries... [The program] requires providers to set rates for schools and libraries at the lowest prices offered to comparable customers... [to] help schools in less-wealthy areas provide their students with access to the Web.”

E-Rate is funded by “Universal Service” charges, which federal law authorizes Wisconsin Bell and other telecommunications companies to include on business and consumer telephone bills nationwide. The funds collected are administered by the Universal Services Administrative Company (USAC) under the direction of the FCC.

Wisconsin Bell argued that the E-Rate Program did not involve any “federal funds” and, therefore, Wisconsin Bell could not be liable under the FCA for the overcharges being alleged. United States District Court Judge Lynn Adelman rejected these arguments, pointing out that the E-Rate program was established by the federal government and that E-Rate funding would not exist if not for the government’s actions. He also rejected Wisconsin Bell’s argument that it had no liability under the FCA because USAC was not acting as a government “agent” when administering E-Rate. He noted: “It seems difficult to dispute that USAC was acting on the FCC’s behalf and subject to its control while administering the subsidy fund.”

Wisconsin Bell asked to appeal Judge Adelman’s decision to the Seventh Circuit Court Appeals immediately, which would have put the trial court case on hold indefinitely, but Judge Adelman rejected this request in his January 20 court order, meaning that the lawsuit

can continue toward trial.

The law firm of O'Neil Cannon Hollman DeJong and Laing SC represents the whistleblower in this case. If you believe you have information that an individual or company is defrauding the federal government, contact [Doug Dehler](#) at OCHD&L for a confidential consultation about your rights and options at (414) 276-5000.