

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,	)	
<i>ex rel.</i> TODD HEATH,	)	
	)	
Plaintiff/Relator,	)	Civil Case No. 2:08-cv-00876-LA
	)	(Lead Case No. 2:08-cv-00724-LA)
v.	)	
	)	
WISCONSIN BELL, INC.,	)	
	)	
Defendant.	)	

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**AMENDED COMPLAINT**

Relator, Todd Heath, on behalf of the United States of America, for his Amended Complaint against Wisconsin Bell, Inc., alleges as follows:

**I. NATURE OF THE CASE**

1. By the Telecommunications Act of 1996 (the “Act”), Congress attempted to bring real competition to the provision of telecommunications, internet access and related services in the United States, and to speed the introduction of advanced telecommunications services. As part and parcel of implementing this goal, the Act gave rise to the creation of the “Schools and Libraries Universal Service Support Mechanism,” commonly referred to as the Education Rate (“E-Rate”) Program, which provides significant federal subsidies for telecommunications, internet and related services to needy schools and libraries. The fund created by the Act for providing subsidies, the Universal Service Fund (“USF”), is administered by the Universal Service Administrative Company (“USAC”), and overseen by the Federal Communications Commission (“FCC”).

2. Since its 1997 creation, the E-Rate Program has been capped nationwide at \$2.25 billion per year. Given the Program's wide popularity with schools and libraries across the nation, and the high need levels of these recipients, "[r]equests for E-Rate funding consistently exceed the annual funding cap." *Telecommunications: Long Term Strategic Vision Would Help Ensure Targeting of E-Rate Funds to Highest-Priority Uses*, GAO-09-253, Washington, DC, March 27, 2009. Thus, to ensure that these scarce federal monies are spent appropriately and efficiently and that the available funds are stretched as far as possible, the Program depends on scrupulous adherence by all participants to Program rules. In this regard, none of the rules is more important than those governing competition and pricing of eligible services.

3. One of the most important safeguards that the FCC enacted, in implementing the methods for providing subsidies to the schools and libraries from the USF, was a system to reduce the prices of the telecommunications services that the USF reimburses:

[T]o achieve the goal of allowing schools and libraries to obtain telecommunications services at discounted rates, Congress designed a system by which common carriers, in the course of providing service to the public generally, are required to offer discounted rates to those eligible entities.

*In the Matter of Federal-State Joint Board on Universal Service*, FCC Docket No. 96-45, January 29, 1999 (Declaratory Order), 14 F.C.C.R. 3040, at 3043.

4. Defendant Wisconsin Bell, Inc. ("Wisconsin Bell" or "Defendant"), as an E-Rate participating entity, unlawfully and secretly has refused to abide by the Act's pricing proscriptions and routinely has failed to bid, offer and as a result invoice (*i.e.*, "charge") its E-Rate eligible services to Wisconsin schools and libraries in accordance with regulatory

mandates. In the process, Defendant has subverted the Act's goals, unlawfully obtained funding commitments that never should have issued, and mischarged and overcharged participating schools, libraries and the United States.

## **II. THE PARTIES**

5. Relator, Todd Heath ("Relator" or "Heath"), is an adult resident and citizen of Waupun, Dodge County, Wisconsin. Heath is the owner of "The Telephone Company," a business through which Heath performs for-hire audits of the telephone and telecommunications records and bills of school districts and businesses. As a result of these audits and the subsequent investigations conducted by Heath and his attorneys, Heath became aware of the fraudulent acts and practices described in this Complaint.

6. Defendant Wisconsin Bell is a Wisconsin corporation with its headquarters and principal place of business at 722 North Milwaukee Avenue, Milwaukee, Wisconsin. Wisconsin Bell is a wholly owned subsidiary of AT&T, Inc., a Delaware corporation with its headquarters and principal place of business in Texas. Wisconsin Bell is the AT&T, Inc. operating company serving Wisconsin.

## **III. SOURCE AND SCOPE OF RELATOR'S ALLEGATIONS**

7. The information related in this Complaint is derived from the original and first-hand knowledge and information of Relator, supplemented by additional factual investigation by his counsel. Prior to the filing of his initial Complaint, Relator, through his counsel, advised the United States that he would be filing a complaint and apprised the United States of his allegations. The claims set forth in this Complaint concern Wisconsin Bell's acts and practices throughout the State of Wisconsin over the ten years prior to the filing of Relator's

initial Complaint in this matter to the present.

**IV. JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 31 U.S.C. §§ 3729-33 (False Claims Act).

9. This Court has personal jurisdiction over the parties, because Wisconsin Bell does business within this District.

10. Venue is proper within the Eastern District of Wisconsin pursuant to 28 U.S.C. §§ 1391(b)(1) and (2), because Relator resides in this District, Defendant is a Wisconsin corporation that does business and has its headquarters in this District, and many of the acts and practices complained of in this Complaint occurred within this District.

**V. FRAUDULENT CONCEALMENT -  
TOLLING OF STATUTE OF LIMITATIONS**

11. To cover up the scheme and actions described in this Complaint, Wisconsin Bell took affirmative actions to conceal its overbilling of the USF, remained silent when required to speak and failed to disclose material facts despite its duty to do so under the terms of its contracts, the statutes and regulations governing the USF, and under the United States False Claims Act.

12. Because Defendant withheld and concealed all information about its fraudulent billing practices, the USF administrator was prevented from discovering Defendant's malfeasance, despite its exercise of reasonable care and diligence.

13. At all material times, Defendant had knowledge of its actions and of the facts giving rise to the claims asserted in this Complaint.

14. At all material times, Defendant concealed material facts from the USF

administrator and school districts by withholding information about its billing practices, continuing to represent and imply that it was billing the USF and school districts consistent with the law and consistent with its affirmative representations, and failing to disclose the overbilling of the USF, despite its obligation under law to do so.

15. Until the recent disclosure, in connection with the filing of Relator's initial Complaint in this matter, the USF administrator and school districts did not know of the facts surrounding Defendant's overbilling of the USF and school districts, and in the exercise of reasonable care and diligence could not have known of Defendant's unlawful conduct.

16. Until the recent disclosures of Defendant's misconduct, no facts were known to the USF administrator and school districts sufficient to put the USF and school districts on notice that each had suffered injuries as a result of Defendant's wrongful conduct.

## **VI. AGENCY ALLEGATIONS**

17. Wisconsin Bell and its employees and any others carrying out the scheme alleged in this Complaint (and each of them) were the agents, servants, employees, successors, assignees, transferees, and/or joint venturers of Wisconsin Bell, and each was, as such, acting within the course, scope and authority of said agency, employment and/or joint venture and was acting with the consent, permission and authorization of Wisconsin Bell. Wisconsin Bell ratified and approved all actions in furtherance of the scheme alleged in this Complaint by such agents, servants, employees, successors, assignees, transferees, and/or joint venturers.

## VII. SUBSTANTIVE ALLEGATIONS

### A. The Telecommunications Act of 1996

18. Congress passed the Act to encourage “universal telecommunications service.” Universal telecommunications service includes “advanced telecommunications and information services,” including telecommunications services, internet access, internal connections and basic maintenance for internal connections for public schools, as well as for public libraries and urban and rural health care providers

19. In the Act, Congress required that telecommunications carriers and other providers provide the services included within the Act's definition “for educational purposes at rates less than the amounts charged for similar services to other parties.” 47 U.S.C. § 254(h)(1)(B). The Act gives authority to the FCC to determine the amount of the appropriate reduced rates. *Id.*

20. The Act further required the FCC to convene a Federal-State Joint Board (“Joint Board”) to recommend changes to the FCC’s existing universal support mechanisms. In particular, the Act directed the Joint Board to recommend, and the FCC to adopt, a new set of universal support rules and regulations to advance the universal service principles enumerated in the Act. 47 U.S.C. Sec. 254(a). Pursuant to this directive, the FCC created the Joint Board, which released its *Recommended Decision* on November 8, 1996. FCC Docket No. 96-45, November 8, 1996.

21. Thereafter, after further hearings, the FCC issued its final decision and order on May 8, 1997. *In the Matter of Federal-State Joint Board on Universal Service*, FCC Docket No. 96-45, May 8, 1997 (“Universal Service Order”).

22. Among other things, the Universal Service Order implemented the E-Rate Program, administered by USAC under the direction of the FCC. The Universal Service Order established that schools and libraries, depending on their level of poverty and the urban/rural nature of the population the school or library serves, would receive substantial discounts from their bills for telecommunications, internet access and related internal connections and basic maintenance services, paid for as reimbursements from the USF.

23. Under the Act and the Universal Service Order, each telecommunications carrier makes payments to the USF based on the carrier's interstate and international telecommunications revenue pursuant to a formula devised by the FCC. Under the Act, telecommunications companies pass this cost through to their subscribers; the charge appears as a separate line item on telephone bills denominated as the "Universal Service Fund Fee."

24. Pursuant to the authority granted by the Act, the FCC created the Universal Service Administrative Company ("USAC"), a non-profit corporation incorporated in Delaware, to collect, pool, and disburse the USF funds contributed by carriers pursuant to 47 U.S.C. § 254(d). All of USAC's operations are carried out pursuant to regulations promulgated by the FCC.

**B. The E-Rate Program**

25. The Schools and Libraries Program of the USF, commonly referred to as E-Rate, is administered by USAC under the direction of the FCC. E-Rate provides discounts to assist most public schools and libraries in the United States in obtaining affordable telecommunications and internet access.

26. Discounts available to schools and libraries depend on the level of poverty

and the urban/rural nature of the population the school or library serves. These discounts are substantial, ranging from 20% to 90% of the costs of eligible services. Eligible schools, school districts and libraries may apply individually or as part of a consortium.

27. The actual percentage discount available to any given school district is determined by a formula created by the FCC. The principal consideration under this formula is the school district's rate of participation in the federal school lunch program, with school districts at the highest rate of program participation receiving a 90% discount, and those at the lowest rates of participation receiving a 20% discount.

28. The discounts are funded by the USF with payments typically made directly to the telecommunications carrier on behalf of an E-Rate beneficiary, reducing the amount the beneficiary must pay. *See* 47 C.F.R. § 54.515.

**C. Pricing Under The E-Rate Program**

29. All participants in the E-Rate Program are required to abide by FCC regulations.

30. The E-Rate Program requires, among other things, that telecommunications carriers offer their "lowest corresponding price" ("LCP") to school districts and public libraries to be eligible for E-Rate federal reimbursement. 47 C.F.R. § 54.511(b).

31. This LCP requirement, defined at ¶¶ 484 - 491 of the Universal Service Order, at 47 C.F.R. § 54.511, and further refined in response to telecommunications carriers' concern's in the FCC's *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, FCC 97-420* (December 30, 1997), protects both the school districts on their portion of the bill and the USF on the portion of



the bill it reimburses.

32. The Universal Service Order required service providers, as a condition of eligibility for E-Rate support, to certify that the prices they offer to schools and libraries are LCP. Offers that do not extend LCP to schools and libraries are ineligible for reimbursement.

**D. Wisconsin Bell's Failure To Offer LCP**

33. Wisconsin Bell for many years has entered into E-Rate contracts with a large number of Wisconsin school districts and libraries. Through these E-Rate contracts, Wisconsin Bell sells millions of dollars of its services and products to E-Rate beneficiaries around the state each year.

34. As described above, the E-Rate contracting process requires Wisconsin Bell to charge E-Rate beneficiaries the LCP for all covered E-Rate services.

35. Notwithstanding the mandates of the E-Rate Program, Wisconsin Bell never implemented the LCP requirement. It failed to create a system to offer, or even calculate, LCP. Never did it make any effort, prior to the filing of Relator's initial Complaint, to determine LCP, or to offer it to school districts and libraries in Wisconsin.

36. Wisconsin Bell and its sales force do not want to provide Wisconsin Bell's services to its E-Rate customers at these relatively low prices. Moreover, Wisconsin Bell and its sales force know that most E-Rate beneficiaries are not sophisticated enough with respect to telecommunications services, or the E-Rate program, to actually determine what Wisconsin Bell's best prices are, or to demand and verify that the prices they pay are Wisconsin Bell's LCP. Moreover, until recently, after Wisconsin Bell received inquiries from the FCC concerning LCP, the company had no method to determine LCP, and had not trained its sales force to offer, or

even calculate, LCP.

37. Instead, Wisconsin Bell offered rates to schools for years on an individual case basis, resulting in disparate, and non-LCP, pricing. For example, in 2005, Fond du Lac School District paid \$13.00 per month for each Centrex (central office exchange) line, while Burlington School District paid \$13.25, Grafton School District paid \$16.44, Cudahy schools paid \$20.24 and Altoona schools paid \$22.06 for the identical service. All of these school districts were E-Rate Program participants. None of the prices offered to these districts were LCP, a fact that the school districts had no way of knowing. As evidenced below in Paragraph 43, these prices were between 140 and 240 percent of Wisconsin Bell's actual LCP. Throughout the time period relevant to this action, Wisconsin Bell's E-Rate pricing offers and charges to other E-Rate participant school districts and libraries were similar, and not compliant with the E-Rate LCP requirement.

**E. Wisconsin Bell's VNS Agreements**

38. In recent years, Wisconsin Bell has entered into Voice Network Services Agreements ("VNS Agreement(s)" or "Agreement(s)") with the state of Wisconsin Department of Administration ("DOA"). These VNS Agreements are negotiated by Wisconsin Bell and the DOA every several years, and the Agreements set Wisconsin Bell's price for telephone services provided to state departments and agencies during the term of the Agreement. The most recent VNS Agreement between Wisconsin Bell and the DOA is dated June 1, 2006, in response to a DOA Request for Proposals ("RFP") dated July 1, 2005.

39. Under the Wisconsin Bell/DOA VNS Agreement, Wisconsin Bell agrees to provide telephone services, including Centrex services, to state departments, agencies,

universities and other users at specified rates and charges.

40. Under this Agreement, public school districts are potential “authorized users” entitled to the pricing provided under the Agreement. The current Wisconsin Bell/DOA VNS Agreement provides, at paragraph 1.7, that all government-related organizations are “authorized users” entitled to enjoy the rates and terms set out in the Agreement. In fact, the July 1, 2005 RFP specifically required bidders to provide these rates to public school districts.

41. The favorable rates available to the State of Wisconsin and all authorized users under the Wisconsin Bell/DOA VNS Agreement are Wisconsin Bell’s LCP for E-Rate Program purposes.

42. Notwithstanding the provisions of the Wisconsin Bell/DOA VNS Agreements, and the E-Rate LCP requirement, Wisconsin Bell routinely has withheld information about these available rates from public school and library customers, and it has billed almost all of them at much higher rates, sometimes three times as high as LCP. After considerable effort by Heath, acting on behalf of his school district clients, and after investigations concerning Wisconsin Bell and its corporate parent, AT&T, Inc., Wisconsin Bell started to bill certain, but far from all, of its Wisconsin school district E-Rate customers at the appropriate, substantially lower, rates, subject to the continuing violations set forth in Paragraph 47 below.

43. As a result of the failure to offer the VNS Agreement pricing to schools, many schools paid vastly more. For instance, in 2005 the Milwaukee School District paid \$13.84 per Centrex line per month, West Bend paid \$16.14, and Sheboygan paid \$17.61, all while the available rate under the VNS Agreement was either \$9.25 or \$9.45, depending on

certain circumstances. All of these school districts were E-Rate Program participants, and none of them were offered, or charged, Wisconsin Bell's LCP.

44. As of the end of 2007, only a small percentage of Wisconsin Bell's E-Rate school district customers were enrolled as authorized users under the Wisconsin Bell/DOA VNS Agreement, and many of those were enrolled at the demand of Relator, in his capacity as a billing consultant hired by the school districts.

45. The fact that only a handful of school districts received the favorable rates under the Wisconsin Bell/DOA VNS Agreements is unsurprising, given that most E-Rate beneficiaries did not know (until very recently) about the more favorable rates, and many still do not know that these rates are available, or how to demand or obtain them. Indeed, in the past, when E-Rate school district customers asked Wisconsin Bell for its most favorable rates (some even specifically inquiring about the Wisconsin Bell/DOA VNS Agreements), Wisconsin Bell sales representatives told them that they were already getting the best rates, and regularly denied that school districts were eligible for VNS contract rates. As part of Heath's business efforts to obtain price reductions for his school district clients, he argued regularly with Wisconsin Bell that the prices it was charging were not the prices that his clients should be offered, and were not LCP. Wisconsin Bell sales representatives regularly denied that better prices were available, or that school districts were entitled to better pricing. Sales representatives also misrepresented whether or not school districts had become authorized users under the Wisconsin Bell/DOA VNS Agreement, forcing him to obtain lists of authorized users from the DOA.

46. The Wisconsin Bell/DOA VNS Agreements, which date back to approximately 1996 or 1997, first became known to certain Wisconsin school districts when

Heath told a number of them about it, in connection with his consulting work. This knowledge has since been passed among some of the school districts, which, recently, have begun to obtain the prices that are available under the Wisconsin Bell/DOA VNS Agreement, as required by the E-Rate regulations.

**F. ISDN Billing Under The VNS Agreement**

47. Moreover, even as to those school districts which received rates under the Wisconsin Bell/DOA VNS Agreement, or which began receiving these rates as a result of Heath's efforts, Wisconsin Bell knowingly overcharged the school districts and the USF. The current VNS Agreement provides that ISDN Prime lines - a service that consolidates multiple voice and data services onto a single line terminating in the school's PBX or host computer - should be billed to authorized users at a rate of \$390.00 per month. Wisconsin Bell is aware that ISDN lines are covered by the VNS agreement, but decided to treat this service as though it is not covered by the VNS Agreement and to bill the service at higher rates, notwithstanding the VNS Agreement and the LCP requirement. For instance, in the Fond du Lac, Hartford Joint 1, Kaukana and Kimberly School Districts, ISDN Prime was billed at \$640.00, \$760.00, \$820.00 and \$845.00 per month, respectively. West Bend School District has four ISDN Prime Lines, all of which were billed at different rates averaging \$1,268.19 per month.

**G. Administrative Fees**

48. Form 472 reimbursement forms submitted by many schools included an administrative charge imposed on schools for utilizing the state contract. These charges are not reimbursable under the E-Rate Program. 47 CFR § 54.502(a)(listing services available for reimbursement).

49. These Form 472 reimbursement forms failed to identify the ineligible administrative fees, in direct violation of E-Rate regulations. 47 CFR § 54.504(e) (request for discounts for product or service including eligible and ineligible components must allocate between eligible and ineligible components, and USAC shall provide reimbursements accordingly).

50. Form 472 reimbursement forms are signed by the school districts and the service provider, here Wisconsin Bell, and the service provider submits the form to USAC, which pays the reimbursement to the provider for submission to the school districts.

51. On many of its bills submitted to the USF with a Form 472 request, schools included administrative fees as part of the reimbursable expenses, and the USF reimbursed these fees. Wisconsin Bell was aware of the inclusion of DOA administrative fees on the Form 472 submissions. It signed and certified these submissions, and failed to explain to school districts the eligible and ineligible components of their bills. As a result, Wisconsin Bell caused the submission of these false claims to the United States.

**H. Wisconsin Bell's Implied False Certifications**

52. At all times since 1997, LCP has been an express requirement of the E-Rate Program.

53. Compliance with LCP is a material condition for reimbursement under the E-Rate Program.

54. As set forth above, Wisconsin Bell did not comply with LCP until at least 2009, and at all times before 2009 it withheld information from USAC, the school districts and libraries about its noncompliance with the LCP requirement.

55. Further, since 2009, despite its enhanced awareness of the extent of its past violations of the LCP rule, Wisconsin Bell has withheld and continues to withhold from USAC, the schools and libraries all information about its past noncompliance with LCP.

56. If USAC had known about Wisconsin Bell's noncompliance with LCP, it would have deemed all requests for reimbursement for Wisconsin Bell's services ineligible, and would not have issued payments on invoices submitted by Wisconsin Bell, or by the schools and libraries, for E-Rate Program services provided by Wisconsin Bell.

57. If at any time since 2009 USAC had learned the extent of Wisconsin Bell's past violations of the LCP rule, it would have sought to recoup funds provided to Wisconsin Bell from 1997 to 2009.

58. Wisconsin Bell knew that LCP was an express requirement of the E-Rate Program and that compliance with the LCP was a material condition for reimbursement from the USF. Wisconsin Bell knew that if USAC were made aware of the facts of Wisconsin Bell's noncompliance with LCP, USAC would withhold payment for such services.

**I. Wisconsin Bell's Express False Certifications**

59. **FCC Form 473** is the E-Rate Program's "Service Provider Annual Certification Form" (referred to in E-Rate terminology as a "SPAC"), which every service provider must fill out annually.

The Form 473 must be completed by each service provider, for each separate service provider Identification Number (SPIN), **"to confirm that the invoice forms submitted by each service provider are in compliance with the FCC's rules governing the schools and libraries universal support mechanism ("Program").**

Instructions for FCC Form 473, p. 1 (emphasis added).

60. Additionally, service providers must fill out FCC **Form 474** (“Service Provider Invoice Form,” or “SPIF”) with each invoice they submit. Form 474 notes that, as a prerequisite to any Form 474 request, a SPAC certification of compliance with E-Rate rules must be on file:

**Service Provider Annual Certification Form**

The FCC Form 473, Service Provider Annual Certification Form, is used by the service provider and **confirms that the service provider’s invoice forms are completed in compliance with FCC rules governing the schools and libraries Universal Service support mechanism.** The Form 473 must be completed and submitted by the service provider prior to the service provider submitting its first invoice to USAC. No invoices will be paid without a Form 473 filed for the pertinent year. If you have not done so already, please be sure to complete and submit the Form 473.

Instructions to Form 474, p. 2 (emphasis added).

61. Wisconsin Bell executed Forms 473 for every year from 1997-2009, and each separate request for E-Rate reimbursement that it submitted included an executed Form 474.

62. In every Form 473, Wisconsin Bell certified that its invoice forms submitted to USAC:

contain requests for Universal Service support for services which have been billed to the service customers on behalf of schools, libraries, and consortia of those entities, **as deemed eligible for Universal Support by the fund administrator.**

Form 473, line 10 (emphasis added).

63. Wisconsin Bell further certified that its invoices:

are based on bills or invoices issued by the service provider to the service provider’s customers on behalf of schools, libraries and consortia of those entities, **as deemed eligible for Universal Service support by the fund administrator.**



Form 473, line 11 (emphasis added).

64. Each and every Form 473 submitted between 1997 and 2009 by Wisconsin Bell was false.

65. Each and every Form 473 submitted between 1997 and 2009 by Wisconsin Bell violated the False Claims Act.

66. Each and every Form 473 submitted between 1997 and 2009 by Wisconsin Bell subjected Wisconsin Bell, and the individual signers, to False Claim Act liability.

67. In addition, each and every Form 473 submitted between 1997-2009 by Wisconsin Bell, and by the individual signers, (1) covered up Wisconsin Bell's scheme; (2) contained false, fictitious or fraudulent statements or representations; and (3) made use of a false writing, all in violation of 18 U.S.C. § 1001.

68. Likewise, E-Rate Program recipients must execute and file two forms. Each school and library participating in the E-Rate Program must execute and file **FCC Form 471**, which requests discounts from the SLD on eligible services to be provided to eligible schools and libraries. In it, the signer must certify compliance with bidding requirements, including that the most cost-effective service was selected (Line 27), that all competitive bidding requirements have been complied with (Line 28), and that the school or library has "complied with all program rules." (Line 30).

69. **FCC Form 472**, the "Billed Entity Applicant Reimbursement Form" (known as a "BEAR"), is the form used to invoice USAC for E-Rate discounts on a retroactive basis (when the service provider does not discount applicant bills directly). **Form 472 is jointly**

**submitted by the applicant and the service provider.** On it, the school or library must certify that the amounts listed on the BEAR “represent charges for eligible services delivered to and used by eligible schools, libraries . . .” FCC Form 472, Block 3, Section A. The service provider must sign the Form 472 in Block 4.

70. The Wisconsin Bell Forms 471 submitted to USAC from 1997 to 2009, and the Forms 472 jointly submitted by Wisconsin Bell and Wisconsin Bell’s customers from 1997 to 2009, were invalid, and false, because of Wisconsin Bell’s failure to offer LCP during that time period. Wisconsin Bell’s noncompliance constituted a major Program violation disqualifying the services from funding eligibility, and the certifications of compliance with Program rules for procurement, pricing, and eligibility of services were false, inasmuch as they were premised on the legitimacy of Wisconsin Bell’s offers. On the part of the schools and libraries, of course, these false certifications were inadvertent, as they were the victims of Wisconsin Bell’s misconduct, not the perpetrators. However, Wisconsin Bell was fully aware of E-Rate Program rules, fully familiar with Form 471 and a joint submitter of Form 472, fully aware that the schools’ and libraries’ certifications were false, and fully aware that USAC relied on these certifications as a condition of payment. Wisconsin Bell caused, jointly submitted (in the case of the Forms 472), benefitted from, and is responsible for the schools’ and libraries’ false certifications.

71. Wisconsin Bell’s causing, and using, the false certifications by the schools and libraries on FCC Form 471 violated the False Claims Act. Wisconsin Bell’s joint submission of FCC Form 472, and its causing, and using, the false certifications by the schools and libraries on FCC Form 472, violated the False Claims Act.

## **VIII. DAMAGES**

72. Because Wisconsin Bell never calculated LCP, and all information about Wisconsin Bell's pricing is entirely within Wisconsin Bell's control, Relator cannot posit a damages estimate. However, given that most, if not all, of Wisconsin Bell's submissions over a 12-year period were unlawful, Relator alleges that damages to the United States are, at least, in the millions of dollars.

### **COUNT I United States False Claims Act**

73. Relator realleges paragraphs 1 through 72 of this Complaint.

74. From 1997 through the present, Wisconsin Bell knowingly made or used, and caused to be made or used, false statements including, but not limited to, false representations, material omissions, and/or false certifications relating to prices charged under the E-Rate Program, and its compliance with Program requirements as a condition of eligibility to participate, in order to cause false or fraudulent claims to be presented to and paid from the USF, in violation of the False Claims Act. Defendant knowingly and willfully has violated the False Claims Act by submitting, and causing the submission of, false claims, and accepting payment pursuant to those false claims.

75. Defendant knowingly has caused school districts and libraries to submit false claims for payment to USAC, knowing that such false claims would be submitted to USAC for reimbursement, and knowing that such school districts and libraries were unaware that they were submitting claims for reimbursement with prices that violated the rules of the E-Rate Program. By virtue of the acts alleged herein, Defendant knowingly presented, or caused to be presented, false or fraudulent claims to the United States Government for payment or approval,

in violation of the False Claims Act, including 31 U.S.C. § 3729(a)(1)(A) and (B).

76. Compliance with E-Rate Program rules and regulations, including LCP, is an express condition of eligibility for reimbursement by the USF. If it were not for Wisconsin Bell's certifications of compliance, both express and implied, USAC would not have issued E-Rate reimbursement payments to Wisconsin Bell or the schools and libraries to which it provided telecommunications services.

77. In addition, Defendant violated and continues to violate 31 U.S.C. § 3729(a)(1)(G), because it knowingly has concealed and knowingly and improperly avoided or decreased its obligation to pay or transmit money to the USF. As is set forth in this Complaint, Defendant knowingly has failed to comply with its statutory obligation to offer its telecommunications services at specifically determined LCP to school districts and libraries since the inception of the E-Rate Program in 1997, and it has concealed the fact that it failed to comply with this obligation. Moreover, at various times over the past ten years, Wisconsin Bell's wrongdoing was highlighted, or in the exercise of reasonable diligence should have been apparent to Wisconsin Bell management and compliance personnel, and it failed to furnish information about its noncompliance with the E-Rate Program to the officials responsible for investigating such wrongdoing, in violation of the False Claims Act.

78. The United States is entitled to three times the amount by which it has been damaged, to be determined at trial, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each false claim presented or caused to be presented. Defendant has been aware of its failure to calculate LCP and the other wrongdoing alleged herein since the inception of the E-Rate Program in 1997. Defendant is not entitled to the benefit of any of the reduced

damages provisions of 31 U.S.C. § 3729(a)(2), because it did not provide the United States with information promptly or otherwise, upon discovering the violations. To the contrary, Wisconsin Bell actively has withheld such information since the inception of the E-Rate Program.

79. USAC, unaware of the foregoing circumstances and conduct of Wisconsin Bell, approved ineligible transactions and funding requests for schools and libraries in Wisconsin and subsequently paid claims to Defendant and its customers out of the USF that were ineligible and either should not have been paid at all, or should only have been paid at lesser amounts than those sought. By reason of these payments, the USF has been damaged in an undetermined amount.

#### **PRAYER FOR RELIEF**

WHEREFORE, Relator prays for judgment against Wisconsin Bell as follows:

- a. that Wisconsin Bell be ordered to cease and desist from submitting false claims to the USF;
- b. that judgment be entered in favor of the United States and against Wisconsin Bell in the amount of each and every false or fraudulent claim, multiplied as provided for in 31 U.S.C. § 3729(a), plus civil penalties and statutory damages to the maximum extent allowed under the False Claims Act;
- c. for all damages suffered by the United States, together with costs and all available pre- and post-judgment interest;
- d. that Relator be awarded the maximum amount allowed pursuant to the False Claims Act;
- e. that judgment be granted for Relator and the United States and

