

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

(UNDER SEAL),

Plaintiff/Relator,

Civil Case No.

v.

(UNDER SEAL),

Defendant.

COMPLAINT

II. THE PARTIES

3. 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, Heath became aware of the fraudulent acts and practices described in this Complaint.

4. Defendant, Verizon North, is a Wisconsin corporation with its principal place of business at 8001 West Jefferson Boulevard., Ft. Wayne, Indiana 46804. Verizon North is a wholly-owned subsidiary of Verizon Communications, Inc. (“Verizon Communications”), a Delaware Corporation with its corporate headquarters at 140 West Street, New York, New York 10007. Verizon North is the Verizon Communications operating company serving, among other states, Wisconsin. Prior to the June 2000 merger of Bell Atlantic Corporation and GTE Corporation, Verizon North was known as GTE North, Inc.

III. SOURCE OF RELATOR’S ALLEGATIONS

5. 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 this Complaint, Relator, through his counsel, advised the United States that he would be filing a complaint and apprised the United States of his allegations.

IV. JURISDICTION AND VENUE

6. 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).

7. In addition, this Court has jurisdiction under the doctrine of supplemental jurisdiction over any state-created claims pled herein, to the extent such claims arise out of a common nucleus of operative facts.

8. This Court has personal jurisdiction over the parties, because Verizon North does substantial business within this District.

9. 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, Verizon North is a Wisconsin corporation that does business in this District, and many of the acts and practices complained of occurred within this District.

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

10. To cover up the scheme and actions described in this Complaint, Verizon North 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 False Claims Act.

11. 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.

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

13. 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.

14. Until the recent disclosure, in connection with the filing of this Complaint, 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.

15. 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

16. Verizon North 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 Verizon North, 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 Verizon North. Verizon North 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 USF

17. Congress passed the Telecommunications Act of 1996 (the “Act”) to encourage universal telecommunications service. Universal telecommunications service includes “advanced telecommunications and information services,” including both telephone and high-speed internet access for public schools, as well as for public libraries and urban and rural health care providers.

18. The Act requires the USF to financially support and supplement the cost of providing telecommunications services to schools, libraries, healthcare providers, low-income consumers, and subscribers in high-cost areas.

19. Under the Act, 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 Federal Communications Commission (“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.”

20. 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

21. The Schools and Libraries Program of the USF, commonly known as “E-Rate” (for “Education 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.

22. 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.

23. 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.

24. 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. Lowest Corresponding Price

25. All participants in the E-Rate program are required to abide by FCC regulations.

26. The E-Rate program requires, among other things, that

telecommunications carriers offer their “lowest corresponding price” to school districts and public libraries to be eligible for E-Rate federal reimbursement. 47 C.F.R. § 54.511(b).

27. This lowest corresponding price requirement means that carriers must, in essence, offer “most-favored nation” pricing to beneficiaries. This pricing limitation protects both the school districts on their portion of the bill and the USF on the portion of the bill it reimburses.

D. The Verizon E-Rate Contract

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

29. As described above, the E-Rate contracting process requires Verizon North to charge E-Rate beneficiaries the lowest corresponding price for its E-Rate services.

30. However, Verizon North and its sales force do not want to provide Verizon North’s services to its E-Rate customers at these relatively low prices. Moreover, Verizon North 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 Verizon North’s best prices are, or to demand and verify that the prices they pay are Verizon North’s lowest corresponding price.

31. In Wisconsin, in recent years, Verizon North has entered into Individual Case Basis (“ICB”) Agreements with the State of Wisconsin Department of Administration

(“DOA”). These ICB Agreements are negotiated by Verizon North and the DOA every few years, and the Agreements (the “Verizon North/Wisconsin ICB Agreements”) set Verizon North’s price for telephone services provided to state departments and agencies during the term of the Agreement.

32. Under the Verizon North/Wisconsin ICB Agreements, Verizon North agrees to provide CentraNet Services (Verizon’s name for Centrex telephone services) to state departments and agencies at specified rates and charges.

33. Under the Verizon North/Wisconsin ICB Agreement, public school districts are specifically identified as potential “authorized users” entitled to the pricing provided under the Agreement. The current Verizon North/Wisconsin ICB Agreement provides, at paragraph 20 and in its Attachments A and B, that the DOA also may qualify “other public and quasi-public agencies and parties affiliated with the State of Wisconsin” as “authorized users” entitled to enjoy the rates and terms set out in the other Verizon North/Wisconsin ICB Agreements have had similar or identical provisions. The DOA has already determined (at Relator’s request) that a number of public school districts are “authorized users” for purposes of such agreements.

34. The favorable rates available to the State of Wisconsin, under the Verizon North/Wisconsin ICB Agreement are the “lowest corresponding prices” for E-Rate Program purposes.

35. Notwithstanding the provisions of the Verizon North/Wisconsin ICB Agreements, and the E-Rate lowest corresponding price requirement, Verizon North 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 the lowest corresponding price. In recent months (after considerable effort by Heath, acting on behalf of his school district clients), Verizon North has started to bill certain, but far from all, of its school district E-Rate customers at the appropriate, substantially lower, rates.

36. On information and belief, as of the end of 2007, a very small percentage of Verizon North's E-Rate school district customers were enrolled as authorized users under the Verizon North/Wisconsin ICB Agreement, and most of those were enrolled at the demand of Heath, in his capacity as a billing consultant hired by the school districts.

37. The fact that only a handful of school districts received the favorable rates under the Verizon North/Wisconsin ICB 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 Verizon North for its most favorable rates (some even specifically inquiring about the Verizon North/Wisconsin ICB Agreements), Verizon North sales representatives told them that they were already getting the best rates, and regularly denied the existence of the Agreements. Only after Heath obtained a copy of the current Verizon North/Wisconsin ICB Agreement, through a public records request, did Verizon North begin acknowledging that the contract existed and that, under it, substantially more favorable rates were available to Verizon North's E-Rate school district customers.

38. The Verizon North/Wisconsin ICB Agreements, which date back to

approximately 1996 or 1997, first became known to 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, within the last half year, have begun to obtain the lowest corresponding prices that are available under the Verizon North/Wisconsin ICB Agreements, as required by the E-Rate regulations.

39. Verizon North is well aware of the large disparities between the prices it charges similarly situated customers (including school districts), is aware that E-Rate customers (and the USF) do not receive the lowest corresponding prices for telephone and internet services, and is also aware that it is required by law to provide the lowest corresponding prices to its E-Rate customers. Each month, Verizon North has submitted billings to USAC for reimbursement (or offset) from the USF, knowing that their billings were excessive and did not reflect the lowest corresponding prices, as required by E-Rate.

40. Verizon North's failure: (a) to notify E-Rate customers that it provides substantially better rates to similarly situated customers, including some other public school districts; (b) to advise its school district customers that such rates are easily available; and (c) to provide E-Rate customers with the lowest corresponding prices for eligible E-Rate services, results in Verizon North charging E-Rate customers far in excess of the rates allowed under the E-Rate program.

41. As a result of these unlawful and excessive charges, E-Rate beneficiaries were and are substantially overcharged on the 10% to 80% portion of their bills that they pay to Verizon North with their own funds.

42. Likewise, as a result of these unlawful and excessive charges, the USF was, and is, substantially overcharged on the 20% to 90% portion of E-Rate beneficiaries' bills paid to Verizon North by the USF.

43. All, or nearly all, bills submitted by Verizon North to USF for reimbursement under the E-Rate program in the State of Wisconsin for the past ten years have failed to comply with the E-Rate program's lowest corresponding price mandate, and Verizon has knowingly or recklessly overcharged the USF, all in violation of the E-Rate regulations.

44. Had the USAC been aware of the undisclosed information described in this Complaint, it would not have provided USF fund payments to Verizon North in the amounts billed by Verizon North, and/or would have demanded substantial refunds.

COUNT I
United States False Claims Act - Use of False Statements
31 U.S.C. § 3729(a)(2)
(False Pricing Information and Discounts)

45. Relator realleges paragraphs 1 through 44 of this Complaint.

46. Over the last ten years, Verizon North knowingly made or used, or caused to be made or used, false statements including, but not limited to, false certifications and/or false representations relating to rates charged under the E-Rate program, in order to cause false or fraudulent claims to be paid from the USF, in violation of 31 U.S.C. 3729(a)(2).

47. Defendant knowingly failed to issue refunds to the USF, even after it reimbursed school districts for E-Rate overcharges.

48. USAC, unaware of the foregoing circumstances and conduct of Defendant, paid inflated claims to Defendant out of the USF. By reason of these payments, the USF has

been damaged in an undetermined amount.

COUNT II

False Claims Act - Presentation of False Claims

31 U.S.C. § 3729(a)(1)

(False Pricing Information and Discounts)

49. Relator realleges paragraphs 1 through 48 of this Complaint.

50. Defendant knowingly presented or caused to be presented false or fraudulent claims including, but not limited to, invoices or demands for payment which were inflated by reason of the false statements described in this Complaint, in violation of 31 U.S.C. § 3729(a)(1).

51. Defendant knowingly failed to issue refunds to the USF, even after it reimbursed school districts for E-Rate overcharges.

52. USAC, unaware of the circumstances and conduct of Defendant, paid inflated claims to Defendant out of the USF. By reason of these payments, the United States has been damaged in an undetermined amount.

COUNT III

Payment Under Mistake Of Fact

(False Pricing Information)

53. Relator realleges paragraphs 1 through 52 of this Complaint.

54. USAC made inflated payments on claims under the E-Rate program in reliance on Defendant's misrepresentations concerning the lowest corresponding prices charged by Verizon North to non-E-Rate customers, and was unaware that Defendant's non-E-Rate customers received rates and prices far better than those offered to E-Rate beneficiaries.

55. Defendant knowingly failed to issue refunds to the USF, even after it

reimbursed school districts for E-Rate overcharges.

56. Verizon North's misrepresentations were material to the payments made by the USAC from the USF.

57. By reason of the foregoing, the USF has been damaged in an undetermined amount.

COUNT IV
Payment Under Mistake Of Fact
(Price Reductions)

58. Relator realleges paragraphs 1 through 57 of this Complaint.

59. Verizon North failed to inform USAC of lower corresponding prices existing during the term of the contracts.

60. Unaware that Defendant had charged lower prices or reduced prices to other customers during the term of the contracts, USAC made excessive payments to Verizon North from the USF.

61. Defendant knowingly failed to issue refunds to the USF, even after it reimbursed school districts for E-Rate overcharges.

62. The failure to inform USAC of lower prices and price reductions and the failure to issue refunds, was material to the payments made by the USF under the contracts.

63. By reason of the foregoing, the USF has been damaged in an undetermined amount.

COUNT V
Unjust Enrichment
(False Pricing Information and Price Reductions)

64. Relator realleges paragraphs 1 through 63 of this Complaint.

65. By reason of the payments to Verizon North from the USF, and Verizon North's failure to refund money to the USF, Verizon North received and retained money to which it was not entitled and has thereby been unjustly enriched in an undetermined amount.

PRAYER FOR RELIEF

WHEREFORE, Relator prays for judgment against Verizon North as follows:

a. that Verizon North 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 Verizon North 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 against Verizon North for all costs, including, but not limited to, court costs, expert fees, investigative expenses, other costs incurred in investigating and prosecuting this matter, and all

attorneys' fees incurred by Relator and the United States in the prosecution of this suit; and

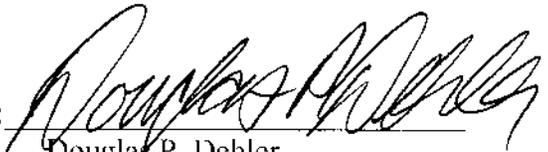
f. that the United States be granted such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Relator, on behalf of the United States of America, hereby demands a jury trial on all claims so triable.

Dated: August ~~26~~^{26th}, 2008

By:



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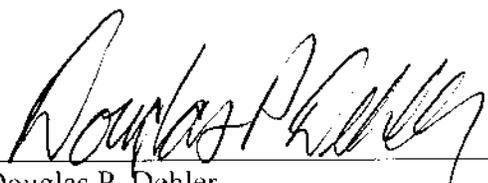
**Counsel for Relator Todd Heath,
On Behalf of The United States of
America**

CERTIFICATE OF SERVICE

26th I certify that true and correct copies of the foregoing were served on the following on this day of August, 2008, pursuant to Fed. R. Civ. P. 4 and the United States False Claims Act.

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