

No. 23-1127

In the
Supreme Court of the United States

WISCONSIN BELL, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA EX REL. TODD HEATH,

Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit**

**BRIEF FOR *AMICI CURIAE* PROFESSORS
OF LAW AND COMPUTER SCIENCE
IN SUPPORT OF RESPONDENT**

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STATEMENT OF INTEREST¹

Amici are professors of law and computer science who study broadband Internet access, telecommunications policy, and network infrastructure. Their research examines the effectiveness of federal programs, including those encompassed by the Universal Service Fund, that support broadband Internet services in underserved areas. They have a professional interest in ensuring that such programs function effectively and in accordance with law and sound public policy. *Amici*'s insights are based on their academic work and experience, and their institutional affiliations are included for identification purposes only.

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¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

including broadband Internet access, affordability, and network neutrality.

SUMMARY OF THE ARGUMENT

Today more than ever, reliable, high-speed Internet access is critical for full participation in modern society—for education, health care, employment, entertainment, community building, civic engagement, and so on. The Universal Service Fund—implemented by the FCC at Congress’s direction—is designed to make these and other telecommunications services available and affordable to all Americans, including those in rural, Tribal, and other high-cost areas that otherwise might not be served. Universal Service Fund programs deliver quality, affordable connectivity to millions of Americans, allowing them to work their jobs remotely, visit their medical providers virtually, educate themselves through e-learning, watch live feeds of political rallies, or just curl up on the couch with a Netflix movie.

Through various forms of subsidies, the Universal Service Fund makes it economically viable for telecommunications companies to serve communities that might otherwise be left behind in the digital age. This case involves alleged fraud in the E-Rate program, which subsidizes high-speed Internet access services—*i.e.*, broadband—for eligible schools and libraries. According to relator Todd Heath, Wisconsin Bell routinely charged these schools and libraries—and in turn the federal government—substantially more than the E-Rate program permits. These overcharges caused not only financial harm, but real-world harm as well: because demand for E-Rate

subsidies typically exceeds available funds, Wisconsin Bell's overcharges directly prevented other schools and libraries across America from receiving the subsidies they needed to provide broadband services to their students and patrons. Pet. App. 49a.

Amici submit this brief to provide information about other programs supported by the Universal Service Fund and to share their findings suggesting misconduct related to one of those programs, the Connect America Fund ("CAF"). The Connect America Fund helps close the digital divide by subsidizing the delivery of broadband and voice service to rural, Tribal, and high-cost areas. Without CAF subsidies, building out the necessary infrastructure to service these regions would be economically infeasible for Internet service providers ("ISPs"). But because of CAF and related subsidies, millions of Americans in these regions now benefit from high-quality, high-speed Internet access.

Unfortunately, however, it appears that some ISPs may have misstated or overstated the extent to which they complied with their obligations under CAF. *Amici's* research into four ISPs reveals that only 55% of addresses at which these ISPs certified that they offer broadband services are, in fact, served. Moreover, only about 60% of *those* addresses currently receive download speeds that comply with the FCC's 10 Mbps threshold. In all, *amici's* research shows an aggregate compliance rate of just 33%, indicating that these four ISPs may have collected millions of dollars in CAF subsidies without living up to their CAF obligations, leaving targeted communities with no or substandard Internet connectivity.

Without whistleblowers like relator Todd Heath, and without novel research like *amici*'s, fraud and other misconduct related to Universal Service Fund programs would often go undetected. And without the False Claims Act, those discovering fraud or other misconduct may lack the avenues or the incentives to bring that misconduct to light. While Petitioner hyperbolically warns that accountability under the False Claims Act would threaten “ruinous” liability, the reality is that fraudulent schemes like Petitioner’s inflict “ruinous” harm on Americans all across the country who rely on Universal Service Fund programs to stay connected to the modern world. The potential for liability—even “ruinous” liability—for committing fraud in this context is a feature, not a bug. The Court should affirm the judgment below.

ARGUMENT

I. The Universal Service Fund Ensures That Millions of Americans Have Access To Critical Telecommunications Services.

One cornerstone of our federal communications policy is “universal service,” the notion that all Americans should have access to the communications technologies they need to participate fully in society. As early as 1907, Theodore Vail, President of AT&T, coined the slogan “One Policy, One System, Universal Service” to encapsulate the company’s vision for the future of communications networks. Congress, likewise, created the FCC and directed it “to make available, so far as possible, to *all the people* of the United States, ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service ... *at reasonable charges.*” Communications Act of 1934 §

1, 47 U.S.C. § 151 (emphasis added). Congress has since repeatedly reaffirmed that “universal service is a cornerstone of the Nation’s communications system.” S. Rep. No. 104-23, at 25 (1995); *see also Consumers’ Rsch. v. FCC*, 67 F.4th 773, 778 (6th Cir. 2023) (“Since 1934, universal service has been a fundamental goal of federal telecommunications regulation.”).

Back when AT&T was a regulated monopoly, FCC pursued the goal of universal telephone service through a “combination of implicit and explicit subsidies.” *Texas Office of Public Utility Counsel v. FCC* (“*TOPUC*”), 183 F.3d 393, 406 (5th Cir. 1999). For example, FCC required AT&T to charge below-cost rates in regions that were expensive to serve (*e.g.*, sparsely populated rural locales) in exchange for allowing AT&T to charge above-cost rates in regions that were comparatively cheap to serve (*e.g.*, dense urban centers). *Id.*; *see also Verizon Comms., Inc. v. FCC*, 535 U.S. 467, 480 (2002). This cross-subsidization strategy worked in a monopoly environment because a monopoly carrier subsidizing below-cost rates to rural customers with above-cost rates to urban customers did not have to worry about being undercut by competing carriers offering urban customers at-cost rates. *Consumers’ Rsch.*, 67 F.4th at 778.

When Congress opened the industry to competition with the Telecommunications Act of 1996, it “recognized that the universal service system of implicit subsidies would have to be re-examined.” *TOPUC*, 183 F.3d at 406. As the accompanying Senate Report explained, “in the competitive environment of

the future it may not be necessary or desirable to meet the requirement to provide universal service by imposing on all telecommunications providers the obligation to provide service throughout an entire area.” S. Rep. No. 104-23, at 28. Instead, Congress recognized, “the public interest may be better served by having carriers contribute to a fund ... which would be used to provide support payments to one or more telecommunications carriers that agree to undertake the [universal] service obligation that might otherwise be imposed on all providers.” *Id.*

Accordingly, in Section 254(d) of the 1996 Act, Congress required interstate carriers to contribute to the advancement of universal service on an “equitable and nondiscriminatory basis” based on mechanisms established by the FCC. 47 U.S.C. § 254(d). The FCC responded to Congress’s directive by adopting a Report and Order that “put[] in place a universal service support system,” *i.e.*, the Universal Service Fund, consistent with the “explicit statutory principles” in Section 254. *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776, ¶ 2 (1997). Interstate carriers are required to pay a percentage of their revenue at a rate set on a quarterly basis, called the “contribution factor,” into the Universal Service Fund, which is then used to make telecommunications services, including broadband services, available and affordable throughout the country. While the FCC sets the regulatory structure pursuant to the 1996 Act, the Universal Service Fund is administered by the Universal Service Administrative Company (“USAC”), a nonprofit entity, under the FCC’s direction.

To implement Congress's directives in Section 254, the FCC adopted four universal service programs, which continue in modernized forms to this day: The E-Rate Program (at issue in this case), the Rural Health Care Program, the Lifeline Program, and the High Cost Program (the subject of Part II of this brief).

E-Rate Program. In Section 254, Congress directed the FCC to establish a universal service program for schools and libraries to access advanced communications services “at rates less than the amounts charged for similar services to other parties.” 47 U.S.C. § 254(h)(1)(B); *see also id.* § 254(b)(6) (“Elementary and secondary schools and classrooms ... and libraries should have access to advanced telecommunications services.”). The FCC implemented that directive with the E-Rate program, which provides telecommunications services, such as broadband Internet access, to eligible schools and libraries at discounts between 20 and 90 percent, based on the poverty level of the surrounding community. *See FCC, E-Rate - Schools & Libraries USF Program*, <https://perma.cc/EEP7-H2A8>.

The E-Rate program has been tremendously successful. Before the E-Rate program, only 14 percent of K-through-12 classrooms had access to the Internet. *Id.* Now, however, thanks in part to support from E-Rate, 99% of school districts have broadband service of at least 100 megabits per second (Mbps) per 1,000 users, providing access for over 46 million students. *See 2020 Broadband Deployment Report*, 35 FCC Rcd. 8986, ¶ 52 (2020). As the Internet has become increasingly essential in daily life, E-Rate ensures that students can learn in the way that

information is delivered today—even if they lack Internet at home—allowing them to develop critical skills they can use in higher education and as they enter the workforce.

E-Rate also covers libraries, providing them with “funding for the purchase of Internet access, internal connections, basic maintenance of internal connections, managed internal broadband services, telecommunications, and telecommunications services.” *Schools & Libraries Universal Serv. Support Mechanism*, 37 FCC Rcd. 1458, 1459 (2022). Americans across the country rely on libraries to get online, especially when they lack other means to do so. For example, when the FCC clarified that Tribal libraries were eligible for the E-Rate program, Chairwoman Rosenworcel shared the story of the San Felipe Pueblo library, which was one of the first Tribal libraries to be connected to high-speed broadband service. *Id.* at 1477. For some residents, she explained, “it was the first time they could head online to learn, connect with loved ones, grow businesses, and search for jobs.” *Id.* The demand was so great that the San Felipe Pueblo built a porch outside the library so that residents could “sit outside and use the signal at the library to connect at any time.” *Id.*

In all, 132,750 schools and libraries participated in the E-Rate program in 2023 alone, receiving support totaling approximately \$2.5 billion. *See Universal Service Admin. Co., 2023 Annual Report*, at 5, 7, <https://perma.cc/3LK3-RNW6> (“USAC 2023 Annual Report”). The ultimate E-Rate beneficiaries are the millions of students, teachers, and library patrons who depend on this universal service program

for access to the advanced communications technologies necessary for modern education and participation in civic life.

Rural Health Care. Congress also provided universal service funding to support rural health care providers' access to advanced communications services. See 47 U.S.C. § 254(h)(1)(A). The Rural Health Care Program encompasses two programs—the Telecommunications Program, which ensures that rural health care providers pay no more than their urban counterparts for telecommunications services used for health care purposes, and the Healthcare Connect Fund Program, which provides a 65% discount on an array of services used for health care purposes. See FCC, *Summary of the Rural Health Care Program*, <https://perma.cc/HRP4-KCAZ>. The program's goal is to improve the quality of health care available to patients in rural communities by ensuring providers' access to affordable telecommunications and broadband services. *Id.*

Telehealth services enabled by the Rural Health Care Program are critical, as residents of “rural America face ever fewer options for affordable, quality medical treatment at the local level.” Promoting Telehealth in Rural America, 34 FCC Rcd. 7335, ¶ 5 (2019). During the height of the COVID-19 pandemic, over 28 million Medicare recipients used telehealth services. U.S. Dept. of Health & Human Services, Centers for Medicare & Medicaid Services, *Medicare Telemedicine Snapshot: Medicare Claims and Encounter Data—March 1, 2020 to February 28, 2021*, <https://perma.cc/ZDR4-ZVSN>. Yet “the pandemic ... exacerbated the challenges that many rural hospitals

were already experiencing, including workforce shortages, limited access to critical supplies and aging infrastructure.” Am. Hospital Assn., *Rural Hospital Closures Threaten Access*, <https://perma.cc/6XLH-NWZY>.

The services supported by the Rural Health Care Program save lives and improve health outcomes. Many health care providers serving rural areas can afford modern telecommunications services only because of the Rural Health Care Program. In 2022 alone, over 14,000 rural health care providers received funding commitments and program disbursements totaling nearly \$497 million. *See* Universal Service Admin. Co., *2022 Annual Report*, at 2, 4, <https://perma.cc/CJA8-SNQT>. With this universal service support, providers are better able to provide telehealth services to millions of patients who otherwise might have to travel long distances for medical treatment, or who might forgo medical treatment altogether.

Lifeline. The Lifeline Program provides support directly to consumers needing assistance to afford telecommunications services. Lifeline predates the Universal Service Fund, but Congress expressly codified it in the 1996 Act, directing the FCC to preserve the preexisting Lifeline Program and to ensure that “universal service is available at rates that are just, reasonable, and affordable.” 47 U.S.C. §§ 254(i), (j).

Today, the Lifeline Program offers a monthly discount to low-income customers of up to \$9.25 toward phone or Internet services, and up to \$34.25 for eligible Tribal households. In 2023, approximately

7.4 million households participated in the Lifeline program, USAC 2023 Annual Report at 11, many of them receiving service at no net cost (i.e., after accounting for the Lifeline subsidies). *See Lifeline & Link Up Reform & Modernization Telecommunications Carriers Eligible for Universal Serv. Support Connect Am. Fund*, 35 FCC Rcd. 12958, ¶ 18 (Nov. 16, 2020). Lifeline is particularly critical for older Americans who use it to stay connected to their communities, health care, and livelihoods. As AARP explained to the FCC: “Lifeline helps older, low-income Americans find and keep a job, get help in the case of an emergency, to access news and information, and to keep in touch with families, educators and health providers.” Letter from AARP et al. to Chairman Ajit V. Pai, FCC, et al., WC Docket No. 17-287, at 1 (filed May 23, 2018).

High Cost Program. The High Cost Program supports the deployment of communications infrastructure to regions that, absent a subsidy, would be prohibitively expensive to serve. See USAC, *High Cost Program Overview*, <https://perma.cc/DLS9-4X3J>. Historically, the High Cost Program subsidized traditional telephone service to ensure that rates and services in rural and urban areas were reasonably comparable. In 2011, the FCC shifted its focus to broadband service, and to ensuring that all people in America—no matter where they live—have access to the connectivity that is increasingly necessary to fully participate in today’s society. *Id.* This modernized program was called the Connect America Fund (“CAF”), and it was aimed at ensuring access to broadband services in underserved areas, with a particular focus on rural America.

The cost of providing these services would be prohibitive in many rural and Tribal areas without CAF assistance. *See, e.g., 2020 Broadband Deployment Report*, 35 FCC Rcd. 8986, ¶ 22 (2020) (“[D]eployment of advanced telecommunications capability on certain Tribal lands, particularly rural Tribal lands, lags behind deployment in other, non-Tribal areas.”). Because broadband service typically requires running physical wires or cables to users, costs per customer depends on the number of customer locations for each mile of cable needed. Steve G. Parsons & James Stegeman, *Rural Broadband Economics: A Review of Rural Subsidies* 10 (July 11, 2018), <https://perma.cc/NLR8-WC6P>. In rural areas, the capital investment is 5.6 times higher than in urban areas for conduit and poles, and 4.2 times higher for fiber optic cable. *Id.* at 20. Other costs—like long-term maintenance and the cost of capital—are also higher in rural areas. And the same is true for wireless broadband service, which is also more expensive to provide to lower-density areas. Due to these dynamics, the cost of providing broadband service in some areas may be so high that no company could do it at rates consumers would pay.

The Connect America Fund provides subsidies to providers who build broadband infrastructure and deliver service to these high-cost areas. This support makes servicing these areas financially viable. By regulation, CAF funds subsidize only one provider per region, and only in regions where there is no competition (and none is likely to emerge). In exchange for the subsidies, CAF rules require providers to offer service reasonably comparable to that which is available in in urban areas, and at rates

that are reasonably comparable to those charged in urban areas. *See* 47 U.S.C. § 254(b)(3); *Connect Am. Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17673–74, 95 (2011).

CAF funding is structured into several phases, with some phases further divided. CAF’s Phase II, to which *amici*’s research relates, was split into two distinct programs. The first, the CAF II Model, offered ISPs a predetermined subsidy based on the FCC’s forward-looking cost model. In return for accepting the subsidy, ISPs promised to serve locations deemed eligible for funding with downstream speeds of at least 10 Mbps. All providers receiving CAF II Model support were required to complete their network deployments by the end of 2021.

II. Fraud and Other Questionable Behavior Interfere With The Success of Universal Service Fund Programs.

As this case suggests, carriers engage in fraud and other questionable behavior that severely undermines the laudable goals of the programs supported by the Universal Service Fund. Todd Heath uncovered conduct that appears to deplete E-Rate resources, leaving fewer funds for connectivity at other schools and libraries. *See* Resp. Br. at 10 (“Petitioner thus knowingly overcharged both the E-rate program and economically disadvantaged schools and libraries for telecommunications services.”); Pet. App. 49a (“Draining the program’s resources through higher prices for services affects the government’s ability to subsidize services for schools and libraries across the country.”).

Amici's research has uncovered similar concerns related to the Connect America Fund. In a peer-reviewed study, recently accepted to a premier publication venue in the computer sciences (the ACM SIGCOMM Conference), *amici* compared the representations that ISPs made under the CAF II Model program—*i.e.*, the addresses that ISPs certified they served and collected CAF subsidies for—and the services that ISPs actually advertised to consumers at the certified locations. See Haarika Manda, et al., *The Efficacy of the Connect America Fund in Addressing US Internet Access Inequities*, 2024 PROCEEDINGS OF THE ACM SIGCOMM CONFERENCE 484; see also Haarika Manda et al., *Measuring Broadband Policy Success*, HARV. L. REV. BLOG (July 16, 2024).

While USAC conducts its own audits of ISPs to check compliance with the rules of various USF programs, federal and state policymakers have raised questions about ISPs' use of CAF funds. See, e.g., Letter from Sen. Shelley Moore Capito to Ajit Pai, Chairman, FCC (Dec. 9, 2020); Press Release, Office of Commissioner Brandon Presley, Mississippi Public Service Commission, *Presley Issues Investigative Subpoena to AT&T After Telecom Giant Refuses to Provide Regulators Information Related to \$283 Million in Internet Expansion Funding* (Sept. 10, 2020). These concerns raised by bipartisan policymakers, alongside widespread reports about problems in CAF, see Jake Neenan, *'It Was Graft': How the FCC's CAF II Program Became a Money Sink*, BROADBAND BREAKFAST (Nov. 9, 2023), at <https://perma.cc/B7VA-NUN7>, led *amici* to this more independent review of the program.

Amici's study used the Broadband-Plan Querying Tool ("BQT"), which is a tool *amici* helped build and that has since become a part of the computer science's Internet measurement community. See Udit Paul, et al., *Decoding the Divide: Analyzing Disparities in Broadband Plans Offered by Major US ISPs*, 2023 PROCEEDINGS OF THE ACM SIGCOMM CONFERENCE 578 ("We develop[ed] a broadband plan querying tool (BQT) that obtains broadband plans (upload/download speed and price) offered by seven major wireline US ISPs for any street address in the US."). In simplified terms, BQT takes, as an input, a dataset of street addresses and returns, as an output, the broadband plans offered by ISPs at each input address. It does so by mimicking the behavior of human users interacting with the ISPs' public websites, collecting data from those websites in the process.

Amici used CAF's public dataset as the input: Subsidized ISPs were required to certify to USAC each of the residential addresses they served under the program. See Universal Service Admin. Co., *CAF Phase II Model*, <https://perma.cc/GFX7-3DV9>; see also Universal Service Admin. Co., *Connect America Fund Broadband Map*, <https://perma.cc/BCC7-XH62>. *Amici* developed and deployed a sampling strategy across 15 states (selected to account for a range of geographic conditions) and four ISPs—AT&T, CenturyLink, Frontier, and Consolidated Communications.² *Amici*'s results are based on data collected from queries

² *Amici*'s specific methodology for sampling addresses across states and census block groups is detailed in the underlying study.

corresponding to over 537,000 street addresses. See Manda, et al., *The Efficacy of the Connect America Fund in Addressing US Internet Access Inequities*, 2024 PROCEEDINGS OF THE ACM SIGCOMM CONFERENCE, at 485.

Amici's study found that, for the ISPs and states studied, only about half (55%) of the addresses that ISPs represented as served can indeed receive broadband service of any kind. This troubling finding suggests that Internet service remains unavailable for nearly 45% of addresses that ISPs certified that they served and received millions in federal subsidies for serving. The results for AT&T are especially concerning, as broadband service remains unavailable at more than two-thirds (68%) of the addresses in the sample that AT&T certified as served. In all, *amici* estimate serviceability rates of 32%, 71%, 90%, and 84% for AT&T, Frontier, CenturyLink, and Consolidated Communications, respectively. *Id.*

In terms of compliance, CAF program rules require that ISPs offer download speeds of at least 10 Mbps. *Id.* at 491. All four ISPs in *amici's* study certified to USAC that they offer service that meets or exceeds this benchmark. For instance, AT&T certified that it offers at least 10 Mbps to all the addresses in the sample. The plans advertised to consumers on the ISPs' websites, however, tell a different story. In addition to the 68% of AT&T addresses that do not receive any service at all, another 5% of the addresses served by AT&T can get, at most, 5 Mbps, and another 5% are offered only AT&T's "Internet Air" product, which does not guarantee any minimum speed. *Id.* at 491, tbl. 1. For CenturyLink, while "only" 10% of

certified addresses are unserved, another 23% can subscribe only to service that falls short of CAF program rules, with speeds below 10 Mbps. *Id.*

Overall, *amici*'s analysis indicates that 67% of CAF addresses in the sample do not receive service from these ISPs that complies with the FCC's program rules—whether because they do not receive service at all or because the service they do receive does not meet minimum standards. *See id.* at 492. These findings are deeply concerning: ISPs have accepted public funds on the condition that they offer broadband access meeting certain minimum service standards. And yet broadband service meeting those standards is not available to consumers residing at these subsidized addresses. In short, these ISPs' representations under CAF are questionable at best, and fraudulent at worst.

In response to press reports on this study, AT&T replied that it “met [its] CAF II commitment in 2021 and no longer receive[s] CAF funding.” Jake Neenan, *Study: CAF II ISPs Stopped Serving Many Locations After Funding Ended*, BROADBAND BREAKFAST (July 12, 2024), <https://perma.cc/B2HH-VWJQ>. And so, it says, it no longer needs to serve those locations or otherwise satisfy program rules. Perhaps that is true—perhaps AT&T fully satisfied CAF rules during the life of the program, and CAF program rules do not apply beyond funding years. But there are some reasons to doubt AT&T's representations. For one, AT&T deployed service to almost 18% of its certified CAF addresses in 2021—the last funding year. Universal Service Admin. Co., *Connect America Fund Broadband Map*, at <https://perma.cc/BCC7-XH62>. On AT&T's reasoning, it was perfectly permissible for it

to accept hundreds of millions of dollars in program subsidies, only to offer service at these locations for less than one year. And even if CAF's program rules were written with such a gaping loophole, *but cf.* U.S. Dep't of Commerce, Nat'l Telecomm. & Info. Admin., *Broadband Equity, Access, and Deployment Program, Notice of Funding Opportunity* 66-67 (specifying, for another broadband funding program, that certain obligations persist "for the useful life of the network assets"), there are other reasons to doubt these ISPs' representations.

Consider, for example, the difference between those addresses that are currently unserved and those that are served but receive only substandard service. On the former, perhaps it is plausible to think that ISPs discontinued service in some remote areas once the funding period ended because of high network maintenance costs. But for the latter, if an ISP's network infrastructure was truly upgraded during CAF to offer service that met program rules during the funding period, it would make little sense that now, only substandard service is available. An alternative and perhaps more plausible explanation is that ISPs never upgraded the infrastructure that serves those addresses at all.

Amici want to be clear: They do not say here that the study definitively proves that AT&T or any ISP acted fraudulently, or that these results alone can definitively prove a claim under the False Claims Act. *Amici's* findings do, however, raise substantial questions about ISPs' compliance with the CAF rules, much like the concerns raised over compliance with E-Rate in this case. As explained in the next section,

the False Claims Act is a critical tool for ensuring that these questions do not go unanswered, and that fraudulent schemes against the government and the beneficiaries of government programs do not go undetected.

III. The False Claims Act is a Critical Tool to Prevent and Prosecute Fraud Involving the Universal Service Fund.

As with all subsidy programs, oversight is needed to ensure that the Universal Service Fund's intended beneficiaries are served and that the companies receiving federal subsidies deliver on their promises. The False Claims Act is an indispensable tool for the government in these oversight efforts.

The False Claims Act is a cornerstone of the federal government's efforts to combat fraud against federal programs. Originally enacted during the Civil War, the False Claims Act has since evolved into one of the most powerful anti-fraud statutes in U.S. law. The False Claims Act imposes liability on individuals and entities who knowingly submit false claims for government funds. 31 U.S.C. § 3729(a)(1)(A). At the same time, the False Claims Act protects companies from overzealous prosecution and frivolous, duplicative, or parasitic claims. This carefully reticulated system has made the False Claims Act highly effective at identifying and deterring fraud without hamstringing industries. Every year, the public recovers billions of dollars through the False Claims Act that would otherwise be lost to fraud. See U.S. Dep't of Justice, *False Claims Act Settlements and Judgments Exceed \$2.68 Billion in Fiscal Year 2023*, <https://perma.cc/V3XC-E253>.

The False Claims Act's *qui tam* provision is key to its success in identifying fraud. This provision gives private citizens incentives to file lawsuits on behalf of the government against individuals or entities defrauding government programs. False Claims Act relators play a crucial role in uncovering fraud that government agencies may not be aware of, particularly in industries where schemes can be complex and skillfully hidden from view. Working in tandem, the financial incentive for relators, 31 U.S.C. § 3730(d), and the False Claims Act's whistleblower protections, *id.* § 3730(h), offers private individuals, non-profit institutions, and researchers an added incentive to investigate concerns about waste, fraud, and abuse in federal programs, thereby helping to ensure the integrity of the Universal Service Fund.

At the same time, the False Claims Act guards against duplicative, parasitic, and frivolous suits. For starters, the False Claims Act sharply limits who can qualify as a relator and what kinds of information can form the basis of a *qui tam* complaint, mandating dismissal if the complaint's allegations are based on information that has already been disclosed publicly by someone other than the relator. *Id.* § 3730(e)(3)-(4). The False Claims Act also empowers the government to take over the relator's action and dismiss or settle it over the relator's objections, allowing the government to weed out meritless *qui tam* actions or ones that interfere with government priorities. *Id.* § 3730(c)(2). And even where the government does not intervene, the court "may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was

clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.” *Id.* § 3730(d)(4). The False Claims Act’s unique combination of deterrence, whistleblower incentives, and protections against abuse make it a necessary and effective tool for ensuring the integrity of the Universal Service Fund.

While, as noted, USAC does conduct some oversight of ISPs participating in Universal Service Fund programs, its oversight has significant limitations. For example, USAC relies heavily on self-reporting by ISPs to uncover misconduct. Given the scale of programs like E-Rate and CAF, however, along with the geographic dispersion of the areas they cover, auditors with limited resources cannot thoroughly audit all self-reported behavior. This weakness is of particular concern where, as here, large companies have the financial means and the industry expertise to skillfully obfuscate or conceal their misconduct. Indeed, a recent Government Accountability Office (“GAO”) audit of the E-Rate program identified USAC’s “[r]eliance on self-certification statements” from ISPs as “an inherent overarching key fraud risk.” GAO, *FCC Should Take Action to Better Manage Persistent Fraud Risks in the Schools and Libraries Program* 14 (Sep. 2020), <https://perma.cc/5EK4-Q8V8>.

Similarly, a 2019 GAO report on the High-Cost Program identified several risks related to oversight challenges, including “financial mismanagement within carriers that allowed companies to submit potentially fraudulent information to USAC,” “audit personnel challenges that were due to attrition and

limited resources and expertise,” and “oversight challenges related to carriers’ reporting, including that it is difficult for USAC to detect when carriers improperly report rates billed for services provided by an affiliate of the company or report incorrect labor rates.” GAO, *FCC Should Take Additional Action to Manage Fraud Risks in Its Program to Support Broadband Service in High-Cost Areas* 21 (Oct. 2019), <https://perma.cc/V7XE-9ZGM>. These insufficiencies in the existing oversight framework underscore the importance of the False Claims Act in ensuring that Universal Service Fund programs realize their intended goals.

Wisconsin Bell and its industry *amici* hyperbolically claim that the potential for liability under the False Claims Act would be “ruinous,” Pet’r Br. at 18, and would “[d]eter[] service providers from participating in Universal Service programs,” Br. of USTelecom—The Broadband Assn. at 22. They provide no evidence, of course, for their bold claim that AT&T and others would stop accepting billions of dollars in federal subsidies if they were not provided free rein to defraud federal programs.

In any event, the results outlined above suggest instead that fraudulent and questionable uses of funding resources may be ruinous to the Universal Service Fund itself. In the CAF context, the costs of fraud and other misconduct are severe. For one, although ISPs received \$10 billion in federal funds through the Connect America Fund, many locations that were promised broadband Internet access do not have it. Even setting aside the financial consequences, fraud on the CAF program leaves millions of

Americans without broadband service in a time where such access is critical to every aspect of modern life. Making matters worse, federal databases treat those addresses as presumptively served (relying on ISPs' certifications), and locations marked as served are ineligible for new rounds of state and federal funding. *See, e.g.*, Cong. Research Serv., *Broadband Equity, Access, and Deployment (BEAD) Program: Issues and Congressional Considerations* (June 15, 2023), <https://perma.cc/H5J3-U6FH> (describing process of “determining unserved locations for BEAD funding allocations”). Affected consumers—the victims of ISPs' inaccurate or fraudulent certifications—must undertake the additional effort of challenging and rebutting the presumption of service at their addresses before they can access new funds. *See generally* U.S. Dept. of Comm., Nat. Telecommunications & Information Admin., *BEAD Challenge Process Policy Notice* (Feb. 8, 2024), <https://perma.cc/6CCM-GDAR>.

In short, the costs of fraud on the Universal Service Fund compound: fraud yields an absence of service; the absence of service yields a need for additional funding; the need for additional funding yields greater administrative costs; and so on. Given those realities, the False Claims Act—including its deterrent effect—provides a valuable and necessary check on telecommunications companies receiving federal subsidies. Through the False Claims Act, whistleblowers and other interested insiders can help the government protect its significant investment in broadband infrastructure, confirm that public resources are efficiently marshalled to the intended recipients, and above all, ensure that the American

public has better and more reliable access to the Internet.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Respectfully submitted,

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