

E-Rate Fraud in Crosshairs Following Charter School Indictment

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E-Rate fraud is back in the spotlight following the [indictment](#) of a Dallas charter school CEO and the owner of a contracting company for an alleged kickback scheme resulting in over \$300,000 in illegal subsidies. Federal prosecutors stated that the pair violated the E-Rate program's competitive bidding requirements and submitted fraudulent invoices to the Federal Communications Commission ("FCC"). The indictment comes on the heels of major FCC settlements and enforcement actions against educational institutions and service providers for alleged E-Rate violations. FCC Chairman Pai has [repeatedly criticized](#) the administration of the E-Rate program and the indictment may spur further calls for action to combat fraud in the program.

The [E-Rate program](#) is the country's largest educational technology program and assists schools and libraries with obtaining affordable telecommunications and internet services. Under the program, educational institutions receive a discount from the FCC (through the Universal Service Administrative Company) on equipment and services provided by vendors. The discounts range from 20 to 90 percent, with higher discounts targeted to institutions located in high-poverty and rural areas. In order to receive the discount, institutions must use a competitive bidding process that treats price as the primary factor for selecting a vendor. Importantly, institutions may not receive any gifts or other payments in exchange for picking a vendor. Institutions also must pay a portion of the costs for the services and equipment to further incentivize the selection of the lowest-cost bid.

Federal prosecutors alleged that the CEO of a group of charter schools received thousands of dollars from a contracting executive in exchange for selecting the contractor as the schools' E-Rate service provider. According to the indictment, the pair falsely certified to the FCC that the vendor selection followed the competitive bidding rules and submitted invoices for equipment and services that were never provided to the schools. Prosecutors also alleged that the schools never paid their required portion of the costs for the discounted equipment and services. In addition to potential prison time,

prosecutors sought the recovery of any money or property traceable to the alleged E-Rate fraud.

The FCC also may take enforcement action against the schools and the contractor. The FCC [recently increased](#) its oversight of the E-Rate program following an uptick in complaints concerning conflicts of interest in bids as well as submissions of falsified claims. Late last year, the FCC required the E-Rate service provider to the New York City Department of Education to return over [\\$17 million](#) in subsidies after a school system consultant submitted fraudulent invoices for work performed by subcontractors he owned. The FCC already required the school system to pay [\\$3 million](#) and adopt a number of compliance measures to resolve the investigation, including the establishment of an E-Rate training program for school leadership and the appointment of an independent compliance monitor. The settlement represented the first time the FCC took enforcement action against an educational institution (instead of a vendor) for E-Rate violations. Moreover, the FCC previously proposed a fine of more than [\\$100,000](#) and sought to recover E-Rate subsidies from an AT&T subsidiary for allegedly overcharging schools a rate 400 to 500 percent higher than the rate available to other customers.

Large penalties for E-Rate violations are common. First, the FCC often applies a “[treble damages](#)” factor to E-Rate overcharges, which can significantly increase fines. Second, the FCC normally imposes a separate fine for each false certification or invoice submitted, which can serve as a forfeiture multiplier. Third, the FCC generally seeks [full restitution](#) of improperly disbursed E-Rate support, including for support disbursed beyond the normal one-year statute of limitations for FCC enforcement actions, arguing that such action does not represent a separate fine but rather a recovery of federal funds.

The indictment and recent FCC E-Rate enforcement actions highlight the importance of putting in place strong compliance safeguards governing the request for and use of federal universal service support. Service providers and support recipients therefore should review their E-Rate compliance policies and procedures carefully.