

Fifth Circuit: False Claims Act (FCA) Inapplicable to Claims Involving Private Funds Administered by Government-Created Programs



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In [United States of America ex rel Rene Shupe v. Cisco Systems, Inc. and Avnet, Inc.](#), No. 13-40807 (5th Cir. July 7, 2014), the Fifth Circuit reversed a district court's order denying a motion to dismiss a **qui tam whistleblower suit**, holding that the **False Claims Act** does not apply to submissions by telecommunications companies to a federal service providing a program when the program was not funded by government money.



Background

Relator Rene Shupe alleged that the defendant telecommunications companies violated the False Claims Act while bidding for and being awarded contracts to install and operate communications networks for school districts and libraries in South Texas. A portion of the funding for installation and operation of these networks came through funds distributed through the Education Rate (E-Rate) program, a program that collects contributions from telecommunications carriers. The E-Rate program is administered by the Universal Service Administrative Company (USAC), with funds from the Universal Service Fund (USF). While the funds subject to the USAC and USF are collected under a mandate from the government and distributed in accordance with FCC regulations, the USAC is neither a government body nor funded with government dollars.

Defendants filed a motion to dismiss in the District Court, claiming that the plaintiff's FCA claims should be dismissed because no federal dollars were at issue in the bidding process. The district court denied the motion, rejecting the argument that funds must be deposited into the Treasury or distributed by a government body for the FCA to apply. The District Court held that the fact that the funds were collected under a mandate from the government and subject to FCC regulations was sufficient to trigger the FCA.

Ruling

On interlocutory appeal, the Fifth Circuit reversed the ruling of the District Court, finding that the defendants could not have submitted false claims to the government because the funds in the E-Rate pool are not government funds. The Fifth Circuit held that, for the FCA to apply, government funds must either flow to the defrauded entity or the false claim must be submitted to a Government entity. Because the funds at issue were not traceable to the U.S. Treasury, the United States did not have a financial stake in its fraudulent losses, despite its regulatory interest in the E-Rate program.

Implications

The Fifth Circuit's decision provides clarity to companies participating in numerous programs that are mandated or regulated by the government but privately funded. Although other claims may be available to whistleblowers claiming the misuse of those funds or the violation of regulatory requirements, claimants in this Circuit will not be able to proceed under the FCA.

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