

★ DEC 13 2019

BROOKLYN OFFICE

MAUSKOPF, J

MANN, M.J.

SD:FJN
F. #2018R02086

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

JOHN COMITO,

Defendant.

----- X

THE GRAND JURY CHARGES:

At all times relevant to this Indictment, unless otherwise indicated:

I. Overview

1. Congress established the Schools and Libraries Program ("E-rate Program") through the Telecommunications Act of 1996 (47 U.S.C. § 251, et seq.). The Federal Communications Commission ("FCC") implemented and oversaw the E-rate Program. The purpose of the E-rate Program was to provide funds to economically disadvantaged schools and libraries, so that those institutions could purchase telecommunication services, internet access and related equipment (such as wiring and routers). The E-rate Program received over 30,000 applications from schools and libraries across the United States seeking funds each year. E-rate Program funds were requested and distributed annually, on a "Funding Year" basis established by the FCC.

2. The E-rate Program helped economically disadvantaged elementary, middle and high schools obtain internet access and other forms of telecommunications

INDICTMENT
CR 19-593
Cr. No.
(T. 18, U.S.C., §§ 981(a)(1)(C), 1341,
1343, 2 and 3551 et seq.; T. 21, U.S.C.,
§ 853(p); T. 28, U.S.C., § 2461(c))

technology by substantially reimbursing those schools for purchasing the necessary equipment and services from private service providers. By billing the E-rate Program for equipment and services that were not, in fact, provided, JOHN COMITO, the defendant, fraudulently obtained approximately \$426,000 of E-rate Program funds to which he was not entitled.

II. The E-rate Program

3. The FCC designated the Universal Service Administrative Company (“USAC”), a non-profit corporation, as the FCC’s agent to administer the E-rate Program, including the disbursement of funds. The FCC issued specific rules and regulations governing participation in the E-rate Program.

4. The E-rate Program provided up to 90% funding for eligible equipment and services and required the applicant school to pay the remaining amount, commonly referred to as the “co-pay.” Ordinarily, the school’s co-pay was determined based on the percentage of students in the school or school district that were eligible for the National School Lunch Program. The FCC identified and published a list of eligible equipment and services annually on USAC’s website and disbursed funds that could be used only for those items. Eligible services included telecommunications service, internet access and internal connections, among other services.

5. A school requesting to receive E-rate Program funds was required to post a FCC Form 470 to USAC’s website for potential service providers to review. In the FCC Form 470, the school described the services and equipment for which the school was seeking E-rate Program funds. Posting the FCC Form 470 opened a competitive bidding

process, in which service providers bid to provide the services and equipment sought by the school.

6. Once a school selected a service provider, the school contracted with that service provider to purchase the services and equipment at the rates specified in the service provider's proposal. The school then notified USAC about the equipment or services ordered, the E-rate Program funds requested and the identity of the service provider who would provide the equipment or services.

7. In order to participate in the E-rate Program, service providers had to file an FCC Form 473 (Service Provider Annual Certification Form) with USAC for each relevant funding year. The service provider certified in the FCC Form 473, among other things, that the service provider would submit invoices only for equipment and services eligible for reimbursement under the E-rate Program. The service provider further certified that it was in compliance with all rules of the E-rate Program.

8. Service providers submitted the FCC Form 473 to USAC by mailing the completed form via the United States Postal Service or commercial carrier to USAC's processing center in Lawrence, Kansas.

9. Once USAC had received and approved a school's request to use a specific service provider for specific equipment and/or services, the service provider could begin to invoice USAC for reimbursement by electronically filing an invoice with USAC. USAC reserved the right to seek further documentation from the school and service provider prior to paying out any E-rate Program funds.

III. The Defendant and the Fraudulent Scheme

10. The defendant JOHN COMITO was a citizen of the United States and a resident of Staten Island, New York. The defendant JOHN COMITO, together with others, owned and operated AutoExec Computer Systems, Inc. (“AutoExec”).

11. AutoExec was an information technology (“IT”) company located at 64 Sand Lane, Staten Island, New York. AutoExec registered with USAC in 1998 to perform E-rate Program services and filed a FCC Form 473 annually with USAC from E-rate Program Funding Year 1998 through E-rate Program Funding Year 2019.

12. AutoExec and defendant JOHN COMITO provided IT equipment and services to approximately 26 elementary, middle and high schools in New York City (the “Schools”) through the E-rate Program.

13. From at least February 2013 up to and including September 2017, JOHN COMITO, together with others, engaged in a fraudulent scheme in which he sought unlawfully to enrich himself by submitting and causing the submission of fraudulent claims for reimbursement to USAC and the Schools for E-rate Program-related equipment and services that were not, in fact, provided to the Schools.

14. As part of the fraudulent scheme, AutoExec and JOHN COMITO contracted with the Schools to provide IT services and equipment through the E-rate Program. As part of the contracting process, AutoExec and the Schools agreed on specific IT services and equipment that AutoExec would provide, as well as the cost for those services and equipment.

15. It was further part of the fraudulent scheme that the Schools never received thousands of dollars’ worth of items and services for which AutoExec billed USAC

and the Schools. In some instances, the Schools received no items or services whatsoever. In other instances, the Schools received substandard, older or otherwise non-approved equipment and services for E-rate Program support.

16. It was further part of the fraudulent scheme that AutoExec and JOHN COMITO falsely certified, in writing, to USAC that AutoExec had complied with its obligations to provide the IT services and equipment to the Schools. Based on these false certifications, the E-rate Program and the Schools made payments to AutoExec. Without the submission of these materially false certifications, neither the E-rate program nor the Schools would have made payments to AutoExec.

17. It was further part of the fraudulent scheme that upon receiving payment from USAC and/or the Schools for fraudulent claims for IT services and equipment that had never been provided, JOHN COMITO, together with others, deposited these funds into AutoExec's bank accounts. JOHN COMITO, together with others, subsequently used funds from the scheme to pay for personal expenses and also transferred funds from those accounts to himself and others.

18. From approximately February 2013 through September 2017, AutoExec received approximately \$426,000 for fraudulent claims submitted to USAC.

COUNT ONE
(Mail Fraud)

19. The allegations contained in paragraphs one through 18 are realleged and incorporated as if fully set forth herein.

20. On or about June 18, 2015, within the Eastern District of New York and elsewhere, the defendant JOHN COMITO, together with others, did knowingly and

intentionally devise a scheme and artifice to defraud USAC and the Schools, and to obtain money and property from them by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did knowingly and intentionally place one or more matters and things in a post office and authorized depository for mail matter, to be sent and delivered by the United States Postal Service, and cause to be delivered by mail, mail containing an FCC Form 473 to USAC's offices in Kansas.

(Title 18, United States Code, Sections 1341, 2 and 3551 et seq.)

COUNT TWO
(Mail Fraud)

21. The allegations contained in paragraphs one through 18 are realleged and incorporated as if fully set forth herein.

22. On or about June 13, 2016, within the Eastern District of New York and elsewhere, the defendant JOHN COMITO, together with others, did knowingly and intentionally devise a scheme and artifice to defraud USAC and the Schools, and to obtain money and property from them by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did knowingly and intentionally place one or more matters and things in a post office and authorized depository for mail matter, to be sent and delivered by the United States Postal Service, and cause to be delivered by mail, mail containing an FCC Form 473 to USAC's offices in Kansas.

(Title 18, United States Code, Sections 1341, 2 and 3551 et seq.)

COUNT THREE
(Wire Fraud)

23. The allegations contained in paragraphs one through 18 are realleged and incorporated as if fully set forth herein.

24. On or about October 5, 2015, within the Eastern District of New York and elsewhere, the defendant JOHN COMITO, together with others, did knowingly and intentionally devise a scheme and artifice to defraud USAC and the Schools, and to obtain money and property from them by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did knowingly and intentionally transmit and cause to be transmitted, by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds, to wit: a fraudulent invoice to USAC bearing invoice number 2261203 to USAC's offices in Kansas.

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

25. The United States hereby gives notice to the defendant that, upon his conviction of any of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offense to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offense.

26. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be

divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EAST [REDACTED] DISTRICT OF NEW YORK

BY: [REDACTED]
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. O.136

F.#: 2018R02086
FORM DBD-34
JUN. 85

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

JOHN COMITO,

Defendant.

INDICTMENT

(T. 18, U.S.C., §§ 981(a)(1)(C), 1341, 1343, 2 and 3551 et seq.; T. 21,
U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

Foreperson

day,

of _____ *A.D. 20* _____

Clerk

Bail, \$ _____

Francisco J. Navarro, Assistant United States Attorney (718) 254-6007