

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Premio, Inc.) File No. EB-06-IH-0853
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)

NOTICE OF DEBARMENT

Adopted: December 13, 2006

Released: January 22, 2007

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

I. INTRODUCTION

1. In this Notice, we debar Premio, Inc. (“Premio”) from all activities associated with the schools and libraries universal service support mechanism (“E-Rate program”).¹ Premio pled guilty to and was convicted of two fraud-related felonies involving the E-Rate program. Based on the evidence in the record, we find Premio’s conduct egregious and deny Premio’s requests to reverse the suspension or halt the debarment proceeding. In light of several important factors, however, we limit the debarment period to one year from the effective date of this Notice. These factors include Premio’s cooperation with the U.S. Department of Justice (“DOJ”) investigation and prosecution of its wrongdoing, explained in the record of the debarment proceeding; the mitigating steps Premio has taken to remedy its past conduct and prevent future problems with its participation in the E-Rate program; and the fact that Premio states that it has voluntarily ceased to participate in the E-Rate program for more than five years already. In response to Premio’s request, we also clarify that the debarment is restricted to participation in the E-Rate program and not to Premio’s other activities, including the provision of equipment and services to schools and libraries outside of the E-Rate program. Finally, as discussed below, we also caution that in future debarment proceedings, we may decline to limit the debarment period.

II. BACKGROUND

2. The E-Rate program is one of several federal programs designed to promote and support the goal of universal service, *i.e.*, making telecommunications available to all Americans. Each of these programs is funded by the Universal Service Fund (“USF”), which is administered by the Universal Service Administrative Company (“USAC”). The resources for the E-Rate program in particular are designed to fulfill the principle expressed in section 254(b)(6) of the Communications Act of 1934 that “[e]lementary and secondary schools and classrooms, . . . and libraries should have access to advanced telecommunications services.”²

¹ See 47 C.F.R. § 54.521.

² 47 U.S.C. § 254(b)(6).

3. As part of an effort to protect the resources of the E-Rate program from waste, fraud, and abuse, the Commission in 2003 adopted rules for suspending and debarring persons convicted of, or held civilly liable for, the commission or attempted commission of fraud and other similar offenses connected with the E-Rate program.³ The purpose of suspension and debarment is to prevent such persons from further participation in the E-Rate program for a certain period of time, and thereby protect the USF.⁴

4. Pursuant to our rules, the Commission “shall suspend and debar” persons convicted of, or held civilly liable for, certain fraud-related offenses involving the E-Rate program, “absent extraordinary circumstances.”⁵ Such offenses include the “attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.”⁶ Upon learning that a person has been convicted of or found liable for one of these offenses, our rules contemplate that the Commission will immediately suspend the person from the E-Rate program, provide “prompt notice” to that effect, and initiate debarment proceedings.⁷ Thereafter, our rules provide the suspended person thirty days to contest suspension or the proposed debarment, or seek to limit its scope, but state that relief from suspension “will not ordinarily be granted.”⁸ Once we have debarred a person, our rules state that the person will be prohibited from involvement with the E-Rate program for three years, although the rules contemplate that the Commission might modify the period in particular circumstances.⁹

5. Since the debarment rule became effective, there have been convictions of eight individuals and four corporations related to their participation in the E-Rate program. After each conviction following the enactment of the rule, the Commission initiated debarment proceedings against the perpetrators. The Commission has debarred the eight individuals¹⁰ and two corporations,¹¹ and today

³ 47 C.F.R. § 54.521; *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (“*Second Report and Order*”).

⁴ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66.

⁵ 47 C.F.R. § 54.521(b). The rule defines a “person” as any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized. 47 C.F.R. § 54.521(a)(6). Opting for a stringent debarment rule, the Commission explicitly rejected a government-wide standard providing that an entity “may” be debarred based on a conviction or civil judgment. *See Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

⁶ 47 C.F.R. § 54.521(c).

⁷ 47 C.F.R. § 54.521(e).

⁸ 47 C.F.R. § 54.521(e)(4).

⁹ 47 C.F.R. § 54.521(g) (lengthen or extend the period “if necessary to protect the public interest”); 47 C.F.R. § 54.521(f) (reverse or limit the period of suspension or debarment “upon a finding of extraordinary circumstances”).

¹⁰ Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Oscar Alvarez, Connect2 Internet Network, Inc., DA 03-2706, Notice of Debarment, December 23, 2003; Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Angelides, Connect2 Internet Network, Inc., DA 03-4088, Notice of Debarment, December 23, 2003; Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Duane Maynard, Howe Electric, Inc., DA 03-4089, Notice of Debarment, December 23, 2003; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Dotson, DA 04-3828, Notice of Debarment, December 6, 2004; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Henry Weaver, DA 05-1727, Notice of Debarment, June 23, 2005; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Haider Bokhari, DA 05-1730,

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resolves the debarment proceedings against two more corporations, Premio, Inc.¹² in this Notice and NextiraOne, LLC in a separate order.¹³

6. Premio manufactures computers, software and peripheral equipment, and sells them to wholesale, commercial, and government entities.¹⁴ On February 22, 2006, Premio pled guilty to two felony offenses arising out of its activities in the E-Rate program.¹⁵ One offense involved a conspiracy in violation of the antitrust laws to suppress and eliminate competition in the E-rate bidding process, and the other involved mail fraud in seeking payment from USAC for ineligible services.¹⁶ In connection with the antitrust violation, Premio admitted that from late 1998 through late 1999, it conspired with one or more vendors of equipment and services related to telecommunications, Internet access and/or internal connections to suppress and eliminate competition for E-Rate projects in the West Fresno Elementary School District in California by allocating contracts and submitting fraudulent and non-competitive bids.¹⁷ In connection with the mail fraud, Premio admitted that from late 1998 through late 2000, it sought payment of more than \$1.2 million in E-Rate funding in the Highland Park School District in Michigan for ineligible video conferencing equipment.¹⁸ For its misconduct, Premio agreed to pay \$400,000 in criminal fines, and has paid in full \$1.3 million in civil settlement that included full restitution to the USF.¹⁹ In addition, Premio has been placed on probation for three years.²⁰ Premio's knowledge of and

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Notice Debarment, June 23, 2005; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Qasim Bokhari, DA 05-1728, Notice of Debarment, June 23, 2005; Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Ronald R. Morrett, DA 05-2349, Notice of Debarment, August 30, 2005.

¹¹ See *NEC-Business Network Solutions, Inc.*, Notice of Debarment and Order Denying Waiver Petition, 21 FCC Rcd. 7491 (2006) ("*NEC Debarment Order*"); *Inter-Tel Technologies, Inc.*, Notice of Debarment, 21 FCC Rcd. 7506 (2006) ("*Inter-Tel Debarment Notice*").

¹² See Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Tom Tsao, Vice President, Premio Inc., DA 06-489, Notice of Suspension and of Proposed Debarment, February 28, 2006 ("*Premio Suspension Notice*"), 71 Fed. Reg. 14527-29 (Mar. 22, 2006). Our rules contemplate that notice of debarment will be provided within 90 days of receipt of information submitted by the respondent in response to a suspension notice. 47 C.F.R. § 54.521(e)(5). Premio filed its Petition on March 27, 2006; 90 days thereafter was June 27, 2006. We may waive our own rules pursuant to 47 C.F.R. § 1.13 in the public interest. To allow the Commission to have a full opportunity to analyze this matter, we hereby waive the 90 day rule as it applies to Premio, Inc.'s responsive pleading, filed March 27, 2006.

¹³ *NextiraOne, LLC*, Notice of Debarment and Order Denying Waiver Petition, FCC 06-126 (rel. Jan. 22, 2007).

¹⁴ See Letter from W. Kenneth Ferree, Esq. and Erin L. Dozier, Esq., Sheppard Mullin Richter & Hampton LLP, outside counsel for Premio, Inc., to Diana Lee, Esq., Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 27, 2006, *attaching* Petition for Reversal of Suspension and Opposition to Proposed Debarment at 2 ("*Petition*").

¹⁵ *U.S. v. Premio, Inc.*, Docket No. CR-06-0086 CRB, Plea Agreement, 5-7 (N.D.Cal. filed February 22, 2006 and entered February 24, 2004) ("*Premio Plea Agreement*"); *United States v. Premio, Inc.*, Criminal Docket No. CR-06-0086 CRB, Judgment (N.D.Cal. filed Feb. 22, 2006 and entered Feb. 23, 2006) ("*Premio Judgment*").

¹⁶ 15 U.S.C. § 1, 18 U.S.C. §§ 1341-1342. See *Premio Judgment* at 1.

¹⁷ *Premio Plea Agreement* at 4-5.

¹⁸ *Premio Plea Agreement* at 6.

¹⁹ *Premio Plea Agreement* at 10.

participation in these crimes was through the activities of an employee acting at all times within the course and scope of his employment, and for Premio's benefit.²¹

7. On February 28, 2006, consistent with the Commission's debarment rule, the Enforcement Bureau's Investigations and Hearings Division issued a Notice of Suspension and Proposed Debarment to Premio, which immediately suspended Premio from participating in the E-Rate program, and initiated debarment proceedings.²² In response to the notice, Premio submitted a Petition for Reversal of Suspension and Opposition to Proposed Debarment ("Petition"), which seeks to overturn Premio's suspension, and to avoid debarment.²³ In the alternative, Premio requests that we limit the period of debarment and clarify the scope of debarment.²⁴

8. On July 13, 2006, the United States Department of Justice ("DOJ") filed a letter explaining Premio's cooperation throughout the government's investigation into Premio's E-Rate activities.²⁵ In addition, Premio filed two letters in the proceeding, on July 27 and August 31, 2006, noting that it has not participated in the E-Rate program since July 2001.²⁶

III. DISCUSSION

9. We reject Premio's argument that extraordinary circumstances exist such that we shall reverse its suspension and terminate its debarment proceeding. Specifically, Premio maintains that "extraordinary circumstances" exist to justify reversal of suspension and avoidance of debarment because of the following factors: (1) a single employee committed the offenses at issue, and Premio has terminated that employee; (2) Premio has cooperated and continues to cooperate with governmental efforts to eliminate fraud, waste, and abuse in the E-Rate program; (3) Premio has committed to establishing a comprehensive compliance program to ensure future compliance with all laws governing its operations, including E-Rate rules and regulations; and (4) Premio has established business relationships with, and extensive expertise in the provision of equipment and services to, the schools and libraries that the E-Rate program is intended to support.²⁷ Premio contends that the debarment rule expressly is not

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²⁰ *Premio Plea Agreement* at 10; *Id.* at Exhibit B (requiring the implementation of a comprehensive Anti-Fraud and Antitrust Compliance Program for the three-year term of probation) ("*Special Terms of Probation*").

²¹ *Premio Plea Agreement* at 4, 5.

²² *See Premio Suspension Notice*; 71 Fed. Reg. 14527-29 (March 22, 2006).

²³ *See generally Petition.*

²⁴ *See Petition* at 12-13.

²⁵ Letter from Scott M. Watson, Chief, Great Lakes office, Antitrust Division, Department Of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed July 13, 2006) ("*DOJ Letter*"). The Plea Agreement obligates DOJ to make any administrative agency considering administrative action against Premio aware of Premio's cooperation upon request. Premio requested DOJ to provide this information in July 2006.

²⁶ Letter from W. Kenneth Ferree, Sheppard Mullin Richter & Hampton LLP, counsel for Premio, Inc., to Trent Harkrader, Eric Bash, and Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 26, 2006 ("*July 26th Supplemental Letter*"); Letter from W. Kenneth Ferree, Sheppard Mullin Richter and Hampton, LLP, counsel for Premio, Inc. to Trent Harkrader, Eric Bash, and Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 31, 2006 ("*August 31st Letter*").

²⁷ *See Petition* at 5.

intended to be punitive, and application of the rule to Premio's case under these facts would not serve the underlying purposes of the rule.²⁸

10. We do not find these circumstances are "extraordinary," pursuant to our rules, and therefore they do not justify reversal of the suspension or avoidance of debarment. Although a single employee committed the crimes that form the basis for the debarment, the fact remains that the E-Rate program was defrauded out of more than \$1 million and that Premio admits in its criminal plea that the employee was "acting at all times within the course and scope of his employment with Premio, and for Premio's benefit."²⁹ Rather than extraordinary, we believe Premio's decision to terminate the employee under these circumstances should be the *ordinary* course of events. We likewise believe that Premio's cooperation with DOJ and establishment of a compliance plan are among the remedies a company should undertake once law enforcement has uncovered fraud within the enterprise. Indeed, Premio is required to cooperate with DOJ and implement a compliance plan as a result of its plea agreement with DOJ.³⁰ Premio makes much of the fact that the compliance plan includes provisions governing its participation in the E-Rate program; Premio contends that the court and the DOJ therefore did not contemplate that it would be debarred, and that these provisions are sufficient to protect the program.³¹ Premio overlooks, however, that the settlement agreement of which the compliance plan is a part, expressly states that "any process or proceeding, administrative or judicial, for any agency suspension or debarment action" is excluded from the settlement terms.³² Moreover, in the Special Terms of Probation, the court explicitly states that it is not "in any way limiting the authority of any agency of the United States to take any action permitted by law or regulation."³³

11. With respect to Premio's claim that debarring it will deprive E-Rate beneficiaries from receiving "high-quality hardware and expert support,"³⁴ we find no evidence that schools and libraries will be unable to find other providers to fill any gap left by Premio's debarment. Indeed, notwithstanding Premio's "longstanding relationships with, and extensive expertise in providing equipment and services to, the schools and libraries that the E-Rate program is intended to support,"³⁵ we note that no school or library filed anything in the record in support of Premio's Petition as expressly permitted by our rules.³⁶ In short, we find no "extraordinary circumstances" to reverse the suspension the Enforcement Bureau imposed, or to avoid debarment. Accordingly, we debar Premio.

12. Although Premio's actions do not constitute extraordinary circumstances necessary to reverse suspension and avoid debarment, we find several countervailing factors support limiting Premio's period of debarment. In our recent debarment actions against NEC Network Solutions, Inc. ("NEC") and Inter-Tel Technologies, Inc. ("Inter-Tel"), we relied on the following facts to reduce the debarment period to six months for NEC and one year for Inter-Tel: (1) DOJ submitted letters indicating that the corporations had cooperated with the government during its investigation, and that such cooperation was

²⁸ *Id.*

²⁹ *Premio Plea Agreement* at 4, 5.

³⁰ *See id.* at 11-13.

³¹ *See Petition* at 7-8, 11-12.

³² *Id.*, Attachment A ("*Premio Settlement Agreement*") at 6.

³³ *Special Terms of Probation* at 2.

³⁴ *Petition* at 11.

³⁵ *Id.*

³⁶ 47 C.F.R. §§ 54.521(e)(3)-(e)(4).

valuable in the detection and prosecution of E-Rate fraud; (2) the corporations accepted full responsibility for their actions by compensating the USF for their wrongdoing, and implemented extensive remedial measures to protect the fund in the future; and (3) the corporations had not participated in the E-Rate program for some length of time already. These facts exist in this case as well and, as discussed below, we limit Premio's debarment period to one year.

13. First, DOJ submitted a letter to the Commission documenting Premio's cooperation with the investigation and prosecution of fraud and collusion associated with certain E-Rate projects. DOJ explained that Premio's plea was the third corporate plea in its investigation, and that the company cooperated by supplying information and documents and encouraging current or former employees to cooperate.³⁷ DOJ stated that "Premio's cooperation has enabled us to define the extent of criminal behavior undertaken by its former employee as well as other defendants currently awaiting trial in this matter. Consequently, we consider the nature, speed, and extent of Premio's cooperation to have been very helpful in developing our investigation to date."³⁸ DOJ noted that Premio would provide additional assistance in its investigation because the Plea Agreement "require[d] Premio to cooperate with the United States in investigating and prosecuting others involved in criminal violations at E-Rate fund projects"³⁹ on a going-forward basis.

14. Second, as DOJ pointed out in its letter, Premio also has accepted full responsibility for its past actions and implemented remedial measures to protect the universal service fund in the future. "Premio has provided full reimbursement to the Universal Service Fund of monies defrauded from the program by it and others it worked with at certain projects."⁴⁰ In addition, Premio has terminated the one employee involved in the fraud that led to Premio's conviction, implemented a code of conduct, and "established an intensive, multi-year program of monitoring, training, and auditing of government procurement contracts at the company's expense to ensure that there are no recurrences of the behavior discussed in the Plea Agreement."⁴¹ More specifically, as part of its agreement with the government, Premio was required to adopt a Compliance Policy that: (1) created an internal structure requiring high level management oversight of all public sector business; (2) established an internal system of monitoring and audits, including steps to be taken if any employee suspects that any company conduct violates the compliance policy or applicable law; (3) educates and trains employees about their obligations and applicable law; (4) ensures that there are regular reports to the CEO and Board of Directors.⁴² In addition, Premio was required to appoint an officer as a Compliance Officer responsible for enforcement and oversight of the Compliance Policy, among other duties.⁴³ Moreover, as part of the settlement terms with DOJ, Premio agreed that, if the company chose to participate in the E-Rate program at any time during the three years following the adoption of its settlement, its Compliance Officer must serve as the central point of contact for certain functions relating to E-Rate.⁴⁴ Premio also agreed that for the three years following the settlement, if the company submitted any bids or applications for E-Rate funds, the Compliance Officer must take certain additional steps to ensure that all employees associated with that

³⁷ See DOJ Letter at 1.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 2.

⁴² *Special Terms of Probation* at ¶ 1.

⁴³ *Id.* at ¶¶ 2-13.

⁴⁴ *Id.* at ¶ 2(e))

activity are properly educated and trained about program requirements.⁴⁵ Of course, as a result of our debarment decision today, Premio cannot participate at all in the E-Rate program for one year, but these additional protections are part of its agreement with DOJ, and will be triggered if the company elects to participate after the Commission's debarment period has ended.

15. Finally, in considering the debarment period, we note that Premio has been out of the E-Rate program for several years already. Premio claims it voluntarily stopped participating in the E-Rate program in July 2001, and has not participated since that time.⁴⁶ USAC records confirmed that no payment has been made to Premio since July 1, 2001.

16. Under these circumstances, where DOJ has recognized and valued the company's cooperation, the company has remedied fully its past conduct and implemented remedial measures designed to protect the USF in the future, and the company has not participated in the E-Rate program for more than five years, we limit Premio's debarment period to one year. This is the same debarment period we imposed in our recent *Inter-Tel Debarment Notice*.

17. We decline to reduce the debarment period to six months as we did in the *NEC Debarment Order*. As we explained in prior debarment decisions, DOJ gave special weight to NEC's cooperation as the first cooperator in an antitrust conspiracy, which led to the discovery of additional misconduct that might not have been detected absent NEC's cooperation. We believe that the facts surrounding Premio's case do not warrant a similar reduction in debarment period.

18. As part of our decision to limit the debarment periods of NEC and Inter-Tel, we imposed additional precautionary measures to protect the E-Rate program.⁴⁷ Premio states that it is currently not participating in the E-Rate program.⁴⁸ In the event that Premio re-enters the E-Rate program after its debarment period, but within three-years after the adoption of its agreement with DOJ (*i.e.*, during the three years in which certain additional protections to its participation in the E-Rate program as a result of the DOJ settlement), we impose those same additional precautionary measures to protect the program. First, we order USAC to review with heightened scrutiny Premio's applications submitted during each of the first two funding years after re-entry. Second, we order USAC to conduct automatic annual audits regarding Premio's compliance with applicable laws and Commission rules governing the E-Rate program, for each of the first two funding periods upon Premio's re-entry.

19. Finally, we grant Premio's request to clarify the scope of any debarment. Premio explains that while it is not currently participating in the E-Rate program, its clients do currently "include schools and libraries throughout the United States, some of which otherwise receive discounted goods and services through the E-Rate program, and entities that provide equipment or services independent of Premio to schools and libraries through the E-Rate program."⁴⁹ Hence, Premio seeks clarification that debarment "does not suggest or imply that Premio is in any way prohibited from selling equipment and services to schools and libraries, or to other third party vendors, that participate in the E-Rate program, so long as payment for such equipment and service does not come from E-Rate funds."⁵⁰ Provided that

⁴⁵ *Id.* at ¶ 10.

⁴⁶ *Supplemental Letter* at 2. To the extent that any E-Rate applications involving Premio were filed since July 2001, and remain pending at USAC, Premio has stated that it "disclaims any interest in, and it relinquishes any claim for reimbursement on, any such applications." See *August 31st Letter*.

⁴⁷ *NEC Debarment Order* at ¶¶ 19-20; *Inter-Tel Debarment Notice* at ¶ 28.

⁴⁸ See *Petition* at 12.

⁴⁹ *Petition* at 8-10.

⁵⁰ *Id.* at 12.

Premio does not engage in activities associated with or related to the E-Rate Program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting or advising applicants or service providers regarding the E-Rate program during the debarment period, Premio's request is consistent with our rules. We therefore clarify that Premio's debarment applies only to the E-rate program, such that nothing in this Notice affects Premio's ability to sell products and services to schools, libraries, or other vendors outside of the E-Rate program.

20. We also strongly caution that future debarment proceedings may not result in similar limitations of the debarment period. This debarment action stems from Department of Justice investigations of fraudulent activities by E-rate participants for conduct occurring between 1998 and 2002.⁵¹ In this proceeding, as well as in the NEC and Inter-Tel Debarment Orders, we relied on multiple mitigating factors in deciding to limit the respective debarment periods. In the case at hand, we find it especially compelling that Premio has voluntarily ceased to participate in the E-Rate program, and has not participated in the program since 2001.⁵² Moreover, we emphasize that the similarities between the facts in the instant proceeding and the NEC and Inter-Tel debarment proceedings dictate that we debar the companies for substantially the same period of time. These similarities include the facts that all three carriers were involved in similar criminal violations over a similar period of time; they all used the same E-rate consulting service; and their acts of fraud affected many of the same school districts. In future debarment matters, however, we may impose stricter debarment sanctions in order to deter waste, fraud and abuse and protect the integrity of the E-rate program.

IV. CONCLUSION

21. Based on the foregoing and to protect the integrity of the E-Rate program, including the investments made by American consumers to benefit this nation's deserving school children, Premio, Inc., including its successors and assigns, is hereby debarred from the E-Rate program for one year, effective upon the earlier of receipt of this Notice or its publication in the Federal Register.⁵³ During the period in which Premio will serve its debarment, Premio, including its successors and assigns, is prohibited from all activities "associated with or related to the schools and libraries support mechanism," or E-Rate program, including "the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism."⁵⁴ We will continue to take appropriate actions in future cases as warranted by the particular circumstances to protect the integrity of the program including, as discussed above, declining to limit debarment periods where the facts or circumstance do not clearly warrant such a limitation.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to section 54.521 of the Commission's rules, 47 C.F.R. § 54.521, that Premio, Inc., including its successors and assigns, IS DEBARRED from the schools and libraries universal service support mechanism for one year, effective upon the earlier of receipt of this Notice of Debarment or publication in the Federal Register.

⁵¹ These investigations examined the practices of NEC, Inter-Tel, Premio and NextiraOne and resulted in proceedings before the Commission. *See supra* notes 11 & 13.

⁵² *See supra* at para. 1.

⁵³ *See* 47 C.F.R. § 54.521(e)(5).

⁵⁴ *See* 47 C.F.R. §§ 54.521(a)(1), 54.521(a)(5), 54.521(d).

23. IT IS FURTHER ORDERED that, in the event Premio, Inc. re-enters the E-Rate program during its three-year probation period, USAC shall review with heightened scrutiny Premio's applications submitted during the first two funding years upon its re-entry into the E-Rate program.

24. IT IS FURTHER ORDERED that, in the event Premio, Inc. re-enters the E-Rate program during its three-year probation period, USAC shall conduct automatic annual audits on Premio's E-Rate activities during each of the first two funding years upon its re-entry into the E-Rate program.

25. IT IS FURTHER ORDERED that the Enforcement Bureau staff shall send, by certified mail/return receipt requested, a copy of this Notice of Debarment to W. Kenneth Ferree, Sheppard, Mullin, Richter & Hampton, LLP, 1300 I Street NW, 11th Floor East, Washington, DC 20005.

26. IT IS FURTHER ORDERED, pursuant to section 54.521 of the Commission's rules, 47 C.F.R. § 54.521, that this Notice SHALL BE PUBLISHED in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch
Secretary

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *Premio, Inc., File No. EB-06-IH-0853*

The E-Rate program is an essential part of our national effort to ensure that all Americans can benefit from the information superhighway in the Digital Age. This is particularly true for those living in economically disadvantaged areas who otherwise would be left on the wrong side of the Digital Divide were it not for the success of the E-Rate program. There are many dedicated people in the Schools and Libraries Division, at the FCC and Justice Department, and elsewhere who are deserving of our praise for bringing the Internet to our schools and libraries and for ensuring that waste, fraud and abuse are removed from the program. Premio, Inc.'s conviction and today's 1-year debarment from the program are further evidence of their efforts. While there were mitigating circumstances in this case, I believe that activities of the kind that the company engaged in may very well merit a longer debarment period given the importance of the E-Rate program and the severity of the company's actions. I therefore concur in this Order.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCURRING**

Re: *Premio, Inc, File No. EB-06-IH-0853*

Since its inception, the universal service support mechanism for schools and libraries (commonly referred to as the E-rate program) has opened up a new world of learning and opportunity for millions of school children and library patrons. To ensure the continued success of the E-Rate program, we must remain committed to monitoring, auditing, reviewing and reinforcing the program. A critical part of our Commission oversight is the use of debarment, which prohibits bad actors from participating in the program. Accordingly, I support our decision in this Order to debar Premio from all involvement in the E-Rate program.

I concur in, rather than approve, this Order because I would have supported a longer debarment period. The Commission's rules provide for a debarment period of three years, which may be extended to protect the public interest or reduced upon a finding of extraordinary circumstances. I note that the Department of Justice has encouraged the Commission to exercise our debarment policy in a way that encourages early and complete cooperation from defendants, and I recognize that the Commission may take into account payment of fines and restitution, the length of time that a provider has not participated, and most importantly a high degree of cooperation with law enforcement. Even weighing these factors, the one-year debarment period adopted in this Order falls short, given the scope and seriousness of the fraud-related activities in this case. Schools do not have unlimited resources, and I am concerned about the effect that fraudulent activity like that perpetrated by Premio can have for the affected school systems and their students. In this case, a longer debarment period would have sent a stronger and clearer message that fraud will not be tolerated.