



**Federal Communications Commission
Enforcement Bureau
445 12th Street, SW
Washington, D.C. 20554**

April 28, 2006

DA 06-951

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert J. Buhay, Chief Financial Officer
NextiraOne, LLC.
c/o Robert A. Salerno, Esq.
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, DC 20006-1888

**Re: Notice of Suspension and Initiation of Debarment Proceedings,
File No. EB-06-IH-1392**

Dear Mr. Buhay:

The Federal Communications Commission (“FCC” or “Commission”) has received notice of the conviction of NextiraOne, LLC (“NextiraOne”) for wire fraud in violation of 18 U.S.C. § 1343 in connection with NextiraOne’s participation in the schools and libraries universal service support mechanism (“E-rate program”).¹ Consequently, pursuant to 47 C.F.R. § 54.521, this letter constitutes official notice of NextiraOne’s suspension from the E-rate program. In addition, the Enforcement Bureau (“Bureau”) hereby notifies NextiraOne that we are commencing debarment proceedings against it.²

Although we suspend NextiraOne and initiate debarment proceedings, we acknowledge that NextiraOne has submitted a petition to waive the debarment rules (“Waiver Petition”).³ We further note that the Department of Justice submitted a letter in reference to that petition. We emphasize that the arguments and evidence presented in both submissions will be evaluated and considered during the debarment proceeding.⁴

¹ Any further reference in this letter to “your conviction” refers to NextiraOne’s April 20, 2006 guilty plea and conviction of this count. *United States v. NextiraOne, LLC*, Criminal Docket No. 4:06-cr-40041-LLP, Plea Agreement (D.S.D. April 20, 2006) (“*NextiraOne Plea Agreement*” or “*Plea Agreement*”). Sentence was imposed on April 20, 2006 and entered on April 21, 2006.

² 47 C.F.R. § 54.521; 47 C.F.R. § 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 C.F.R. § 54.521).

³ See *NextiraOne, LLC Petition for Waiver of Section 54.521 of the Commission’s Rules*, Petition for Waiver (filed April 14, 2006) (“*Waiver Petition*”).

⁴ See generally, *Waiver Petition*; Letter from Scott Hammond, Assistant Attorney General, Antitrust Division, Department of Justice, to Marlene E. Dortch, Secretary, Federal Communications (filed April 14, 2006).

I. Notice of Suspension

The Commission has established procedures to prevent persons who have “defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism” from receiving the benefits associated with that program.⁵ NextiraOne pled guilty to wire fraud for activities in connection with its participation in the E-rate program with the Oglala Nation Education Coalition (“ONEC”) schools in the District of South Dakota.

According to the plea, in December 2000, NextiraOne (known as Williams Communications Services, Inc. at that time) falsely promised ONEC schools that they could participate in the E-rate program for free; in January 2001, a member of the Oglala tribe, under Williams’ guidance, submitted to the administrator of the E-rate program, the Universal Service Administrative Company (“USAC”), E-rate applications that contained non-competitive manufacturer “list” prices; in December 2001, NextiraOne filed an invoice with USAC even though no equipment had been delivered to ONEC schools; and beginning in December 2001, NextiraOne re-engineered the ONEC networks such that the costs decreased, but failed to notify ONEC. In January 2002, a billing employee at NextiraOne submitted an invoice by facsimile to USAC that made it falsely appear that ONEC had been billed for non-discounted portions of the equipment and services funded by E-rate, as well as certain ineligible items, and as a result, NextiraOne over-billed the E-rate program in excess of \$1 million.

Pursuant to section 54.521(a)(4) of the Commission’s rules,⁶ NextiraOne’s conviction requires the Bureau to suspend it from participating in any activities associated with or related to the schools and libraries support mechanism, 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.⁷ NextiraOne’s suspension becomes effective upon the earlier of its receipt of this letter or publication of notice in the Federal Register.⁸

Suspension is immediate pending the Bureau’s final debarment determination. In accordance with the Commission’s debarment rules, NextiraOne may contest this

⁵ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66. The Commission’s debarment rules define a “person” as “[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.” 47 C.F.R. § 54.521(a)(6).

⁶ 47 C.F.R. § 54.521(a)(4). See *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225-9227, ¶¶ 67-74 (2003) (“*Second Report and Order*”).

⁷ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. § 254; 47 C.F.R §§ 54.502-54.503; 47 C.F.R. § 54.521(a)(4).

⁸ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 C.F.R. § 54.521(e)(1).

suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. NextiraOne's request must be received within 30 days after it receives this letter or after notice is published in the Federal Register, whichever comes first.⁹ Such requests, however, will not ordinarily be granted.¹⁰ The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.¹¹ Absent extraordinary circumstances, the Bureau or the Commission will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.¹²

NextiraOne asks us to toll its mandated suspension from the E-rate program. NextiraOne offers no justification, however, for its request that we depart from our mandated suspension procedure. We will consider NextiraOne's arguments regarding the appropriateness of debarment at the debarment stage of the proceeding. Accordingly, we deny NextiraOne's request that we toll the suspension.

II. Initiation of Debarment Proceedings

NextiraOne's guilty plea to criminal conduct in connection with the E-rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against the company. NextiraOne's conviction falls within the categories of causes for debarment expressly contained in section 54.521(c) of the Commission's rules.¹³ Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, we initiate debarment proceedings against NextiraOne.

As with its suspension, NextiraOne may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the Federal Register.¹⁴ During this debarment phase of the proceeding, we will consider the arguments NextiraOne presents in its Waiver Petition. We will also weigh the views of the Department of Justice in considering NextiraOne's debarment.

⁹ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(4).

¹⁰ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

¹¹ 47 C.F.R. § 54.521(e)(5).

¹² *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(5), 54.521(f).

¹³ "Causes for suspension and debarment are the conviction of or civil judgment for 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." 47 C.F.R. § 54.521(c). Such activities "include 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 schools and libraries support mechanism described in this section ([47 C.F. R.] § 54.500 *et seq.*)." 47 C.F.R. § 54.521(a)(1).

¹⁴ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(2)(i), 54.521(e)(3).

Absent extraordinary circumstances, the Bureau or the Commission will debar NextiraOne.¹⁵ Within 90 days of receipt of any opposition to NextiraOne's suspension and proposed debarment, the Bureau or the Commission, in the absence of extraordinary circumstances, will provide NextiraOne with notice of its decision to debar.¹⁶ If the Bureau or the Commission decides to debar NextiraOne, its decision will become effective upon the earlier of NextiraOne's receipt of a debarment notice or publication of the decision in the Federal Register.¹⁷

If and when NextiraOne's debarment becomes effective, it will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for some period of time.¹⁸

Please direct any responses to the following address:

Diana Lee, Esq.
Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
Room 4-C443
445 12th Street, S.W.
Washington, D.C. 20554

If NextiraOne submits its response via hand-delivery or non-United States Postal Service delivery (e.g., Federal Express, DHL, etc.), please send the response to Ms. Lee at the following address:

Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

¹⁵ *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

¹⁶ *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(5).

¹⁷ *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 C.F.R. § 54.521(f).

¹⁸ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 C.F.R. §§ 54.521(d), 54.521(g).

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If NextiraOne has any questions, please contact Ms. Lee via mail, by telephone at (202) 418-1420 or by e-mail at diana.lee@fcc.gov. If Ms. Lee is unavailable, you may contact Eric Bash by telephone at (202) 418-1188 and by e-mail at eric.bash@fcc.gov.

Sincerely yours,

Kris A. Monteith
Chief
Enforcement Bureau

cc: James J. Regan, Esq., Crowell and Moring LLP (via E-Mail)
E. Ashton Johnston, Esq., DLA Piper Rudnick Gray Cary, US LLP (via E-Mail)
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