



**Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, SW, Suite 4-C330
Washington, D.C. 20554**

May 16, 2008

DA 08-1176

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND FACSIMILE (203-977-7301)

Mr. Thomas J. Kennedy III
c/o Stanley A. Twardy, Jr.
Day Pitney LLP
One Canterbury Green
Stamford, CT 06901-2047

Re: Notice of Debarment, File No. EB-08-IH-0285

Dear Mr. Kennedy:

Pursuant to section 54.8 of the rules of the Federal Communications Commission (the "Commission"), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or "E-Rate program") for a period of three years.¹

On February 6, 2008, the Enforcement Bureau (the "Bureau") sent you a Notice of Suspension and Initiation of Debarment Proceedings (the "Notice of Suspension").² That Notice of Suspension was published in the Federal Register on March 10, 2008.³ The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.⁴

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the Federal Register.⁵ The Commission did not receive any such opposition.

¹ See 47 C.F.R. §§ 0.111(a), 54.8.

² Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Thomas J. Kennedy III, Notice of Suspension and Initiation of Debarment Proceedings, 23 FCC Rcd 1669 (Inv. & Hearings Div., Enf. Bur. 2008) (Attachment 1).

³ 73 Fed. Reg. 12733 (March 10, 2008).

⁴ See Notice of Suspension, 23 FCC Rcd at 1670-72.

⁵ See 47 C.F.R. §§ 54.8 (e)(3) and (4). That date occurred no later than April 9, 2008. See *supra* note 3.

Mr. Thomas J. Kennedy III
May 16, 2008
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As discussed in the Notice of Suspension, you pled guilty to and were convicted of mail fraud, in violation of 18 U.S.C. §1341, for your participation in the E-Rate program.⁶ You admitted to participating in a scheme to defraud the E-Rate program by, among other things, taking actions with other co-schemers to ensure that costs for services on E-rate projects would be billed at inflated rates, which in turn led to inflated invoices being submitted to the Universal Service Administrative Company for reimbursement from the E-rate program.⁷ Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.8(c) of the Commission's rules.⁸ For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the Federal Register.⁹ Debarment excludes you, for the debarment period, from 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."¹⁰

Sincerely,

Hillary S. DeNigro
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)
Anthony E. Kaplan, Esq., Supervisory Assistant United States Attorney
Calvin B. Kurimai, Esq., Assistant United States Attorney

⁶ See Notice of Suspension, 23 FCC Rcd at 1670.

⁷ See *id.* In addition to Richard E. Brown, the Bureau debarred Keith J. Madeiros, both former SBC account manager participating in the scheme, from the E-Rate program. See Letter from Hillary S. DeNigro to Keith J. Madeiros, Notice of Debarment, DA 08-1177 (Enf. Bur., Investigations & Hearings Div., rel. May 16, 2008).

⁸ *Id.* at 1670; 47 C.F.R. § 54.8(c).

⁹ See Notice of Suspension, 23 FCC Rcd at 1672.

¹⁰ See 47 C.F.R. §§ 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 23 FCC Rcd at 1672.



Attachment 1
Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
445 12th Street, SW, Suite 4-C330
Washington, D.C. 20554

February 6, 2008

DA 08-300

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND FACSIMILE (203-977-7301)

Mr. Thomas J. Kennedy III
c/o Stanley A. Twardy, Jr.
Day Pitney LLP
One Canterbury Green
Stamford, CT 06901-2047
Email: satwardy@daypitney.com

**Re: Notice of Suspension and Initiation of Debarment Proceedings,
File No. EB-08-IH-0285**

Dear Mr. Kennedy:

The Federal Communications Commission (“FCC” or “Commission”) has received notice of your conviction for mail fraud in violation of 18 U.S.C. § 1341 in connection with your participation in the schools and libraries universal service support mechanism (“E-Rate program”).¹ Consequently, pursuant to 47 C.F.R. § 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (“Bureau”) hereby notifies you that we are commencing debarment proceedings against you.²

¹ Any further reference in this letter to “your conviction” refers to your February 13, 2007 guilty plea and subsequent conviction of mail fraud. *United States v. Thomas J. Kennedy III*, Criminal Docket No. 3:07-CR-186 (RNC), Plea Agreement (D. Conn. filed Aug. 24, 2007 and entered Aug. 27, 2007) (“*Kennedy Plea Agreement*”), Judgment (D. Conn. filed and entered Jan. 24, 2008) (“*Kennedy Judgment*”).

² 47 C.F.R. § 54.8; 47 C.F.R. § 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the schools and libraries universal service support mechanism in 2003. *See 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*”) (adopting section 54.521 to suspend and debar parties from the E-rate program). In 2007, the Commission extended the debarment rules to apply to all of the Federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, 16410-12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending subsections (a)(1), (5), (c), (d), (e)(2)(i), (3), (e)(4), and (g)).

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.³ You pled guilty to mail fraud for activities in connection with your participation in the E-Rate program involving telecommunications upgrade projects in four Connecticut school districts.⁴ While employed as an account manager for a company that had a partnership arrangement with Southwestern Bell Communications (“SBC”), you participated in a scheme to defraud SBC and the E-Rate program.⁵ You and three SBC employees, including Richard E. Brown and Keith J. Madeiros, decided that engineers would be hired for E-Rate funded projects and that the cost of these engineering services would be billed at inflated rates first to SBC and later to a SBC subcontractor.⁶ SBC paid the invoices and then submitted those invoices to USAC seeking excessive reimbursement from the E-rate funds.⁷ The invoices were inflated by more than \$500,000.⁸ You admitted that payments for the inflated amount were split primarily among you, Mr. Brown, and Mr. Madeiros and that you received \$249,525.⁹

Pursuant to section 54.8(a)(4) of the Commission’s rules,¹⁰ your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support

³ See *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66; *Program Management Order*, 22 FCC Rcd at 16387, ¶ 32. 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. § 54.8(a)(6).

⁴ See *Kennedy Plea Agreement* at 1; *United States v. Thomas J. Kennedy III*, Criminal Docket No. 3:07-CR-186 (RNC), Information, ¶¶ 7-28 (D. Conn. filed Aug. 24, 2007 and entered Aug. 27, 2007) (“*Kennedy Information*”); <http://www.usdoj.gov/usao/ct/Press2008/20080123-5.html> (last accessed Jan. 25, 2008) (“*DOJ January 23, 2008 Press Release*”).

⁵ See *Kennedy Information* at ¶¶ 13-15; *DOJ January 23, 2008 Press Release* at 1.

⁶ See *Kennedy Information* at ¶¶ 15-28; *DOJ January 23, 2008 Press Release* at 1. The Bureau has debarred Richard E. Brown from the E-Rate program. See Letter from Hillary S. DeNigro to Richard E. Brown, Notice of Debarment, 22 FCC Rcd 20569 (Enf. Bur., Investigations & Hearings Div., rel. Nov. 27, 2007); 72 Fed. Reg. 73821 (Dec. 28, 2007). The Bureau has suspended Keith J. Madeiros from the E-Rate program and initiated debarment proceedings against him. See Letter from Hillary S. DeNigro to Keith J. Madeiros, Notice of Suspension and Initiation of Debarment Proceedings, DA 08-129 (Enf. Bur., Investigations & Hearings Div., rel. Jan. 18, 2008).

⁷ See *Kennedy Information* at ¶¶ 21, 26; *DOJ January 23, 2008 Press Release* at 1.

⁸ See *id.*

⁹ See *id.*

¹⁰ 47 C.F.R. § 54.8(a)(4). See *Second Report and Order*, 18 FCC Rcd at 9225-9227, ¶¶ 67-74.

mechanism.¹¹ Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the Federal Register.¹²

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the Federal Register, whichever comes first.¹³ Such requests, however, will not ordinarily be granted.¹⁴ The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.¹⁵ Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.¹⁶

II. Initiation of Debarment Proceedings

Your guilty plea to and conviction of 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 you. Your conviction falls within the categories of causes for debarment defined in section 54.8(c) of the Commission's rules.¹⁷ Therefore, pursuant to section 54.8(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you 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.¹⁸ Absent extraordinary circumstances, the Bureau will debar you.¹⁹ Within 90 days of receipt of any

¹¹ 47 C.F.R. §§ 54.8(a)(1), (d).

¹² *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 C.F.R. § 54.8(e)(1).

¹³ 47 C.F.R. § 54.8(e)(4).

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 54.8(e)(5).

¹⁶ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.8(e)(5), 54.8(f).

¹⁷ "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, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism." 47 C.F.R. § 54.8(c). Such activities "include the receipt of funds or discounted services through [the Federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the Federal universal service] support mechanisms." 47 C.F.R. § 54.8(a)(1).

¹⁸ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.8(e)(3).

¹⁹ *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.²⁰ If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the Federal Register.²¹

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.²² The Bureau may, if necessary to protect the public interest, extend the debarment period.²³

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, DC, 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, DC, 20554. You shall also transmit a copy of the response via email to diana.lee@fcc.gov and to vickie.robinson@fcc.gov.

²⁰ *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.8(e)(5).

²¹ *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. § 54.8(f).

²² *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 C.F.R. §§ 54.8(d), 54.8(g).

²³ *Id.*

Mr. Thomas J. Kennedy III

February 6, 2008

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If you have 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 Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418-1420 and by e-mail at vickie.robinson@fcc.gov.

Sincerely yours,

Trent B. Harkrader
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)
Anthony E. Kaplan, Esq., Supervisory Assistant United States Attorney
Calvin B. Kurimai, Esq., Assistant United States Attorney