



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

May 19, 2008

DA 08-1180

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND FACSIMILE (415-621-4111)

Mr. Earl Nelson
c/o Richard B. Mazer, Esq.
Law Offices of Richard Mazer
99 Divisadero Street
San Francisco, CA 94117
richardbmazer@yahoo.com

**Re: Notice of Suspension and Initiation of Debarment Proceedings,
File No. EB-08-IH-1138**

Dear Mr. Nelson:

The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of collusion and aiding and abetting, in violation of 15 U.S.C. § 1 and 18 U.S.C. § 2, 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 guilty plea and subsequent conviction of collusion and aiding and abetting. *United States v. Earl Nelson*, Criminal Docket No. 3:05-CR-00208-CRB-011, Judgment (N.D.Cal. filed and entered Mar. 21, 2008) ("*Earl Nelson Judgment*"). See *United States v. Video Network Communications, Inc. et al.*, Criminal Docket No. 3:05-CR-00208-CRB, Superseding Indictment at ¶¶ 79-80 (N.D.Cal. filed Dec. 8, 2005 and entered Dec. 12, 2005); <http://www.usdoj.gov/atr/cases/f213600/213626.htm> (accessed May 1, 2008) ("*VNCI Superseding Indictment*").

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*

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 collusion and aiding and abetting a scheme to defraud the E-Rate program.⁴ You admitted that, as a former branch manager of Inter-Tel Technologies, you entered into and engaged in a conspiracy with other defendants and co-conspirators to suppress and restrain competition by submitting collusive, noncompetitive, and rigged bids for an E-Rate project at the West Fresno Elementary School District in Fresno, California.⁵

Pursuant to section 54.8(a)(4) of the Commission’s rules,⁶ 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 mechanism.⁷ Your suspension becomes effective upon the earlier of your 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, 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.⁹ Such

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)).

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 *VNCI Superseding Indictment* at ¶¶ 79-80.

⁵ See *id.* The Commission debarred Inter-Tel Technologies, Inc. in 2006 for the company’s conviction for mail fraud and conspiracy to suppress and eliminate competition. See *Inter-Tel Technologies, Inc.*, Notice to Debarment, 21 FCC Rcd 7506 (2006); 71 Fed. Reg. 42397 (2006). The following four individuals, who were also charged in the *VNCI Superseding Indictment*, have pled guilty or been found guilty and subsequently sentenced: Judy Green, George Marchelos, William Holman, and Allan Green. We are sending separate notices of suspension and initiation of debarment proceedings to these individuals.

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

⁷ 47 C.F.R. §§ 54.8(a)(1), (d).

⁸ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 C.F.R. § 54.8(e)(1).

⁹ 47 C.F.R. § 54.8(e)(4).

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 will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.¹²

II. Initiation of Debarment Proceedings

Your guilty plea 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.¹³ 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.¹⁴ Absent extraordinary circumstances, the Bureau will debar you.¹⁵ Within 90 days of receipt of any 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.¹⁶ 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.¹⁷

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

¹⁰ *Id.*

¹¹ 47 C.F.R. § 54.8(e)(5).

¹² *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.8(e)(5), 54.8(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, 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).

¹⁴ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.8(e)(3).

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

¹⁶ *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.8(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. § 54.8(f).

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mechanism for three years from the date of debarment.¹⁸ The Bureau may, if necessary to protect the public interest, extend the debarment period.¹⁹

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.

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,

Hillary S. DeNigro
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)
Michael Wood, Antitrust Division, United States Department of Justice (via mail)

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

¹⁹ *Id.*