

broadcast workforce, identifies each staff member by gender and race/ethnicity. Broadcast licensees or permittees with five or more full-time employees are required to file Form 395-B on or before September 30th of each year. Although licensees or permittees with fewer than five full-time employees are not required to file, if they do, they need to complete and file only Sections I, II and IV of the FCC Form 395-B, but not the portions requiring workforce information, and thereafter need not file again unless their employment increases to five or more full-time employees.

In *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, Third Report and Order and Fourth Notice of Proposed Rulemaking, 69 FR 34950, June 23, 2004, 19 FCC Rcd 9773 (2004) ("2004 Order"), the Commission considered issues relating to the Annual Employment Report forms, including Form 395-B. In the 3rd R&O, the Commission adopted revised rules requiring broadcasters and multichannel video programming distributors (MVPDs) to file annual employment reports. Radio and television broadcasters will use Form 395-B to file annual employment reports. The intent of the 3rd R&O is to reinstate and update requirements for broadcasters and MVPDs to file annual employment reports. The intent of the Fourth Notice of Proposed Rulemaking, which remains pending, was to provide time for MVPDs, broadcast licensees, and the public to address the issue of whether the Commission should keep these forms confidential after they are filed. With the effective date of the rulemaking deciding the confidentiality issue, MVPDs and broadcasters must start keeping records of their employees so they can prepare their annual employment reports due to be filed on the first due date thereafter.

In its 2004 Order, the Commission stated that Form 395-B conformed to the racial and employment categories contained in the then-existing Form EEO-1 Employer Information Report issued by the Equal Employment Opportunity Commission ("EEOC"). 2004 Order, at 9977-78.

The Order noted that the EEOC had proposed to revise its EEO-1 form to incorporate new racial and employment categories approved by OMB. It also noted that, when the revised EEO-1 form was released, the Commission would review its Form 395-B to determine what changes were needed to comply with the new OMB standards, and whether it could conform Form

395-B to those standards consistent with Section 334 of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. 334; see 2004 Order at 9978.

With the EEOC's release of the EEO-1 incorporating revised racial and employment categories, the FCC's Media Bureau sought public comment ("Media Bureau Seeks Comment on Possible Changes to FCC Forms 395-A and 395-B," Public Notice DA 08-752, released April 11, 2008; 73 FR 21346, April 21, 2008) ("Public Notice") on whether to incorporate the EEOC's revised categories and whether such changes would be consistent with Section 334 of the Act. The public comment period ended on June 6, 2008, and the Commission has completed its review of all the comments and reply comments. The Commission did not receive any comments opposing the incorporation of the EEOC's revised categories in the FCC's annual employment reports.

The Commission has concluded that the proposed changes to FCC Form 395-B are consistent with Section 334 of the Act, which allows the FCC to make non-substantive technical or clerical revisions to annual employment reports in order to reflect changes in, *inter alia*, terminology. Because these changes do not subtract any information requested on the form, but rather seek more detail on race identification and official/manager occupations, with minor changes in terminology, we concluded that they are consistent with Section 334. 47 U.S.C. 334.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

[FR Doc. E8-20143 Filed 8-28-08; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 08-1862]

### Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission (the "Commission") debars Mr. Allan Green from the schools and libraries universal service support mechanism (or "E-Rate Program") for a period of three years based on his conviction of conspiracy to commit mail fraud in connection with his

participation in the program. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

**DATES:** Debarment commences on the date Mr. Allan Green receives the debarment letter or August 29, 2008, whichever date come first, for a period of three years.

**FOR FURTHER INFORMATION CONTACT:** Rebekah Bina, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4-C330, 445 12th Street, SW., Washington, DC 20554. Rebekah Bina may be contacted by phone at (202) 418-7931 or e-mail at [Rebekah.Bina@fcc.gov](mailto:Rebekah.Bina@fcc.gov). If Ms. Bina 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](mailto:vickie.robinson@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission debarred Mr. Allan Green from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.8 and 47 CFR 0.111. Attached is the debarment letter, DA 08-1862, which had the suspension letter, DA 08-1179 attached, and was mailed to Mr. Allan Green and released on August 7, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY-B420, Washington, DC 20554, telephone (202) 488-5300 or (800) 378-3160, facsimile (202) 488-5563, or via e-mail <http://www.bcpweb.com>.

Federal Communications Commission.

**Vickie Robinson,**  
*Assistant Chief, Investigations and Hearings Division, Enforcement Bureau.*

The debarment letter, which attached the suspension letter, follows:  
August 7, 2008.

DA 08-1862.

Via Certified Mail; Return Receipt Requested and E-Mail.

Mr. Allan Green, c/o Mark Rosenbush, Esq., Attorney at Law, 214 Duboce Avenue, San Francisco, CA 94103.

Re: Notice of Debarment, File No. EB-08-IH-1141.

Dear Mr. Green: 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.<sup>1</sup>

On May 19, 2008, the Enforcement Bureau (the "Bureau") sent you a Notice of Suspension and Initiation of Debarment Proceedings (the "Notice of Suspension").<sup>2</sup> That Notice of Suspension was published in the **Federal Register** on June 9, 2008.<sup>3</sup> 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.<sup>4</sup>

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**.<sup>5</sup> The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to and were convicted of conspiracy to commit mail fraud, in violation of 18 U.S.C. 71, in connection with your participation in the Philadelphia Academy ("Academy") E-Rate project ("Project").<sup>6</sup> You admitted to participating in a conspiracy whereby you and others (collectively "co-conspirators"), among other things, misrepresented to Academy employees that co-conspirators would be able to obtain a grant to cover the Academy's share of the cost of the Project, provided false and misleading documents to the Universal Service Administrative Company ("USAC") indicating the Academy has secured access to funding from an independent source, and misrepresented to USAC the share of the

Project's costs that USAC would be paying.<sup>7</sup> 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.<sup>8</sup> 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**.<sup>9</sup> 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."<sup>10</sup>

Sincerely,

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).  
May 19, 2008.

DA 08-1179.

Via Certified Mail Return Receipt  
Requested and E-Mail.

Mr. Allan Green, c/o Mark Rosenbush,  
Esq., Attorney at Law, 214 Duboce  
Avenue, San Francisco, CA 94103.

Re: Notice of Suspension and  
Initiation of Debarment  
Proceedings, File No. EB-08-IH-  
1141.

Dear Mr. Green: The Federal Communications Commission ("FCC" or "Commission") has received notice of your conviction of conspiracy to commit mail fraud, in violation of 18 U.S.C. 371, in connection with your participation in the schools and libraries universal service support mechanism ("E-Rate program").<sup>1</sup> Consequently, pursuant to

47 CFR 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.<sup>2</sup>

### 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.<sup>3</sup> You pled guilty to conspiracy to commit mail fraud through your activities as a principal of ADJ Consultants, Inc. ("ADJ") in relation to the Philadelphia Academy ("the Academy") E-Rate project (the "Project").<sup>4</sup> Specifically, you admitted that you and others (collectively "co-conspirators") met with Academy employees, obtained their agreement to utilize ADJ services for the Project, and told Academy employees that co-conspirators would be able to obtain a grant to cover the Academy's share of

2005 and entered Dec. 12, 2005); <http://www.usdoj.gov/atr/cases/f213600/213626.htm> (accessed May 1, 2008) ("VNCI Superseding Indictment").

<sup>2</sup> 47 CFR 54.8; 47 CFR 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)).

<sup>3</sup> See *Second Report and Order*, 18 FCC Rcd at 9225, para. 66; *Program Management Order*, 22 FCC Rcd at 16387, para. 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 CFR 54.8(a)(6).

<sup>4</sup> See *Allan Green Substitute Information* at paras. 2, 6. The following four individuals, who were also charged in the VNCI Superseding Indictment, have pled guilty or been found guilty, and subsequently have been sentenced: Judy Green, George Marchelos, Earl Nelson, and William Holman. We are sending separate notices of suspension and initiation of debarment proceedings to these individuals. VNCI and ADJ are now defunct; charges against the companies have been dropped.

<sup>1</sup> See 47 CFR 0.111(a), 54.8.

<sup>2</sup> Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Allan Green, Notice of Suspension and Initiation of Debarment Proceedings, 23 FCC Rcd 8211 (Inv. & Hearings Div., Enf. Bur. 2008) (Attachment 1).

<sup>3</sup> 73 FR 32579 (June 9, 2008).

<sup>4</sup> See Notice of Suspension, 23 FCC Rcd at 8212-14.

<sup>5</sup> See 47 CFR 54.8(e)(3) and (4). That date occurred no later than July 9, 2008. See *supra* note 3.

<sup>6</sup> See Notice of Suspension, 23 FCC Rcd at 8211-12.

<sup>7</sup> See *id.* at 8212.

<sup>8</sup> 47 CFR 54.8(c).

<sup>9</sup> See 47 CFR 54.8(g). See also Notice of Suspension, 23 FCC Rcd at 8213.

<sup>10</sup> See 47 CFR 54.8(a)(1), 54.8(a)(5), 54.8(d); Notice of Suspension, 23 FCC Rcd at 8214.

<sup>1</sup> Any further reference in this letter to "your conviction" refers to your guilty plea and subsequent conviction of conspiracy to commit mail fraud. See *United States v. Allan Green*, Criminal Docket No. 3:05-CR-00208-CRB-009, Judgment (N.D.Cal. filed and entered Apr. 10, 2008) ("Allan Green Judgment"), Substitute Information (N.D.Cal. filed Apr. 9, 2007 and entered Apr. 10, 2007) ("Allan Green Substitute Information"). See *United States v. Video Network Communications, Inc. et al.*, Criminal Docket No. 3:05-CR-00208-CRB, Superseding Indictment (N.D.Cal. filed Dec. 8,

the Project's costs.<sup>5</sup> You admitted that the co-conspirators further agreed and submitted to the Universal Service Administrative Company "(USAC") false and misleading documents indicating that the Academy had secured access to funding from an independent foundation and that the co-conspirators also misrepresented the share of the Project's costs that USAC would be paying.<sup>6</sup>

Pursuant to section 54.8(a)(4) of the Commission's rules,<sup>7</sup> 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.<sup>8</sup> Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.<sup>9</sup>

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.<sup>10</sup> Such requests, however, will not ordinarily be granted.<sup>11</sup> The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.<sup>12</sup> Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.<sup>13</sup>

## 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.<sup>14</sup> 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**.<sup>15</sup> Absent extraordinary circumstances, the Bureau will debar you.<sup>16</sup> 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.<sup>17</sup> 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**.<sup>18</sup>

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.<sup>19</sup> The Bureau may, if necessary to protect the public interest, extend the debarment period.<sup>20</sup>

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236

Massachusetts Avenue, NE., Suite 110, Washington, DC 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, SW., 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, SW., Room 4-C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to [diana.lee@fcc.gov](mailto:diana.lee@fcc.gov) and to [vickie.robinson@fcc.gov](mailto: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](mailto: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](mailto: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).

[FR Doc. E8-20145 Filed 8-28-08; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2872]

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 20, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of

<sup>5</sup> See *Allan Green Substitute Information* at para. 5.

<sup>6</sup> See *id.*

<sup>7</sup> 47 CFR 54.8(a)(4). See *Second Report and Order*, 18 FCC Rcd at 9225-9227, paras. 67-74.

<sup>8</sup> 47 CFR 54.8(a)(1), (d).

<sup>9</sup> *Second Report and Order*, 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

<sup>10</sup> 47 CFR 54.8(e)(4).

<sup>11</sup> *Id.*

<sup>12</sup> 47 CFR 54.8(e)(5).

<sup>13</sup> See *Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), 54.8(f).

<sup>14</sup> "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 CFR 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 CFR 54.8(a)(1).

<sup>15</sup> See *Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

<sup>16</sup> *Second Report and Order*, 18 FCC Rcd at 9227, para. 74.

<sup>17</sup> See *id.*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

<sup>18</sup> *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 CFR 54.8(f).

<sup>19</sup> *Second Report and Order*, 18 FCC Rcd at 9225, paras. 67; 47 CFR 54.8(d), 54.8(g).

<sup>20</sup> *Id.*