



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

February 26, 2009

DA 09-477

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED AND FACSIMILE (404-872-1622)

Mr. R. Clay Harris
c/o Allison Cobham Dawson
Federal Defender Program, Inc.
Suite 1700, The Equitable Building
100 Peachtree Street, N.W.
Atlanta, GA 30303
E-Mail: allison_dawson@fd.org

**Re: Notice of Suspension and Initiation of Debarment Proceedings,
File No. EB-09-IH-0003**

Dear Mr. Harris:

The Federal Communications Commission (“FCC” or “Commission”) has received notice of your conviction of conspiracy to defraud the United States and bribery, in violation of 18 U.S.C. §§ 371 and 666(a)(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 conviction by a federal jury of conspiracy to defraud the United States and bribery. *United States v. R. Clay Harris*, Criminal Docket No. 1:07-CR-00287-CC, Verdict (N.D.Ga. filed July 31, 2008 and entered Aug. 1, 2008) (“*Harris Jury Verdict*”); Department of Justice Press Release (July 31, 2008), available at <http://atlanta.fbi.gov/dojpressrel/pressrel08/bribery073108.htm> (*DOJ July 31, 2008 Press Release*). See also *United States v. R. Clay Harris*, 1:07-CR-00287-CC, Judgment (N.D.Ga. filed and entered Dec. 24, 2008) (finalizing conviction and imposing sentence) (“*Harris Judgment*”); *United States v. R. Clay Harris*, 1:07-CR-00287-CC, Criminal Indictment (N.D.Ga. filed on Aug. 28, 2007 and entered Aug. 30, 2007) (“*Harris 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*

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 On July 31, 2008, a federal jury found you guilty of bribery and conspiracy to defraud the United States in connection with your participation in the E-Rate program.⁴ Evidence provided at trial demonstrated that, as President and majority owner of Multimedia Communications Services Corporation (“MCSC”), you provided bribes to co-conspirators Arthur Scott and Evelyn Myers Scott (“co-conspirators”), former employees of Atlanta Public Schools (“APS”) and co-owners of M&S Consulting,⁵ in order for the co-conspirators to support your efforts in securing MCSC’s performance of E-Rate and other technology-related work for APS.⁶ As part of this conspiracy, you provided the co-conspirators and M&S Consulting over \$230,000 between November 2000 and November 2002.⁷ During the same period of time, Arthur Scott and other APS employees allocated E-Rate work to MCSC without requiring MCSC to submit competitive bids. Arthur Scott and MCSC also submitted defective applications and bills to USAC resulting in overpayments from the E-Rate program to MCSC.⁸ As a result of your conviction, you were sentenced to five years in federal prison to be followed by three years of supervised released. You were also ordered to pay, along with the co-conspirators, restitution totaling over \$234,000.⁹

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

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)).

³ *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. § 54.8(a)(6).

⁴ *See Harris Jury Verdict; DOJ July 31, 2008 Press Release*.

⁵ Arthur Scott and Evelyn Myers Scott were convicted in connection with their roles in this scheme, and each was subsequently debarred from the E-Rate program. *See* Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mrs. Evelyn Myers Scott, Notice of Debarment, 23 FCC Rcd 137 (Inv. & Hearings Div., Enf. Bur. 2008); Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Arthur Scott, Notice of Debarment, 23 FCC Rcd 143 (Inv. & Hearings Div., Enf. Bur. 2008). Evelyn Myers Scott and Arthur Scott both testified at trial against Mr. Harris. *See* Department of Justice Press Release (Dec. 22, 2008) available at <http://www.usdoj.gov/usao/gan/press/2008/12-22-08b.pdf> (*DOJ Dec. 22, 2008 Press Release*).

⁶ *DOJ Dec. 22, 2008 Press Release; Harris Indictment* at 8-18.

⁷ *DOJ Dec. 22, 2008 Press Release; Harris Indictment* at 8-10.

⁸ *DOJ Dec. 22 2008 Press Release; Harris Indictment* at 5-8.

⁹ *DOJ Dec. 22, 2008 Press Release; Harris Judgment* at 2-5.

¹⁰ 47 C.F.R. § 54.8(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225-27, ¶¶ 67-74.

applicants or service providers regarding the schools and libraries support 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 conviction of bribery and conspiracy to defraud the United States 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 opposition to your suspension and proposed debarment, the Bureau, in the absence of

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." 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 mechanism." 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.

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 Rebekah Bina, 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 Rebekah Bina, 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 Rebekah.Bina@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 47 C.F.R. § 54.8(e)(5). 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),(g).

²³ 47 C.F.R. § 54.8(g).

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If you have any questions, please contact Ms. Bina via mail, by telephone at (202) 418-7931 or by e-mail at 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.

Sincerely yours,

Hillary S. DeNigro
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Glenn D. Baker, Assistant United States Attorney, Department of Justice (via e-mail)
Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)