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## **FCC Debars Two Service Providers From the E-rate Program**

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**From: Cavan Fabris**

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On January 22, 2007 the Federal Communications Commission issued two separate decisions debarring, for one year, both Premio, Inc. and NextiraOne LLC from any participation in the schools and libraries universal support mechanism ("E-Rate Program").

### **Premio, Inc.**

On February 22, 2006 Premio pled guilty to and was convicted of two fraud-related felonies involving the E-Rate program. Premio's illegal activities defrauded the E-rate program of more than \$1 million.

Premio's first offense involved a conspiracy in violation of the antitrust laws to suppress and eliminate competition in the E-rate bidding process. Premio admitted that in 1998 and 1999, it conspired with one or more vendors of equipment and services to suppress and eliminate competition for E-Rate projects in the West Fresno Elementary School District in California by allocating contracts and submitting fraudulent and non-competitive bids.

Premio's second offense involved mail fraud in seeking payment from USAC for ineligible services. Premio admitted that from 1998 through 2000, it sought payment of more than \$1.2 million in E-Rate funding for ineligible video conferencing equipment from the Highland Park School District in Michigan.

### **NextiraOne LLC**

On April 20, 2006, NextiraOne pled guilty to felony counts arising out of E-rate activity in South Dakota. NextiraOne's illegal activity defrauded the E-rate program of more than \$1 million.

NextiraOne pled guilty and was convicted for wire fraud in violation of 18 U.S.C. § 1343. NextiraOne falsely promised the Oglala Nation Education Coalition ("ONEC") that they could participate in the E-Rate program free of charge. As a result, ONEC submitted E-Rate paperwork, under guidance from NextiraOne, containing non-competitive manufacturer's "list" prices. NextiraOne then submitted an invoice to the SLD. However, NextiraOne had not delivered equipment to the schools. NextiraOne also re-engineered the ONEC network resulting in lower costs but failed to notify ONEC of the resulting reduction in cost. Furthermore, NextiraOne submitted an invoice to the SLD falsely billing non-discounted portions of equipment and services in addition to ineligible items.

## Debarment Order

Pursuant to Section 54.521(a)(6) of the Commission's rules, the Commission "shall suspend and debar" persons convicted of, or held civilly liable for, certain fraud-related offenses involving the E-Rate program, "absent extraordinary circumstances."

Premio argued that extraordinary circumstances existed because: (1) a single employee committed the offenses, and Premio terminated that employee; (2) Premio cooperated with the U.S. Department of Justice ("DOJ") investigation; (3) Premio established a compliance program to ensure future compliance with E-Rate rules and regulations; and (4) Premio has established business relationships and expertise in the provision of equipment and services within the E-Rate program.

NextiraOne argued that: (1) its cooperation with the DOJ was extraordinary, including the hiring a forensic consulting firm to evaluate the scope of the fraud involved; (2) NextiraOne assumed full responsibility for its misconduct by terminating those employees involved and implementing a corporate code of conduct; (3) NextiraOne has not participated in the E-Rate program for more than three years; and (4) NextiraOne's acquisition by BlackBox counsels against debarment, because BlackBox's management, oversight, and philosophy are certain to protect the E-Rate program from waste, fraud, and abuse.

The Commission rejected both Premio's and NextiraOne's claims that extraordinary circumstances exist to reverse suspension and avoid debarment. However, the Commission limited the period of their disbarment from three years to one year. The Commission found that a one year disbarment period was warranted for Premio and NextiraOne because of their cooperation with the DOJ investigation, their acceptance of full responsibility for its actions, and their voluntary withdrawal from participation in the E-rate program in 2001 and 2003, respectively.

Please contact the attorneys at Womble Carlyle should you have any questions regarding your participation in the E-rate Program.

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