



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

January 19, 2005

DA 05-112

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Steven G. Mihaylo
Chief Executive Officer
Intel-Tel Technologies, Inc.
1615 S 52nd Street
Tempe, AZ 85281-6233

**Re: Notice of Suspension and of Proposed Debarment,
File No. EB-05-IH-0012**

Dear Mr. Mihaylo:

The Federal Communications Commission (“FCC” or “Commission”) has received notice of the January 5, 2005 conviction of Inter-Tel Technologies, Inc. (“Inter-Tel”) for mail fraud and aiding and abetting in violation of 18 U.S.C. §§ 1341 and 2, and for conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.¹ Consequently, pursuant to 47 C.F.R. § 54.521, this letter constitutes official notice of Inter-Tel’s suspension from the schools and libraries universal service support mechanism (“E-rate program”). In addition, the Enforcement Bureau (“Bureau”) hereby notifies Inter-Tel that we are commencing debarment proceedings against it.²

I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission’s rules,³ Inter-Tel’s conviction requires the Bureau to suspend it from participating in any activities

¹ *United States v. Inter-Tel Technologies, Inc.*, No. CR-04-399-CRB, Plea Agreement (N.D.Cal. filed Dec. 8, 2004) (“*Inter-Tel Plea Agreement*”). The Order accepting this plea agreement was signed by the Court on January 5, 2005, and entered on January 10, 2005.

² 47 C.F.R. § 54.521; 47 C.F.R. § 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 C.F.R. § 54.521).

³ 47 C.F.R. § 54.521(a)(4). See *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225-9227, ¶¶ 67-74 (2003) (“*Second Report and Order*”).

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.⁴ Inter-Tel's suspension becomes effective upon the earlier of its receipt of this letter or publication of notice in the Federal Register.⁵

Suspension is immediate pending the Bureau's final debarment determination. Inter-Tel may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Inter-Tel's request must be received within 30 days after it receives this letter or after notice is published in the Federal Register, whichever comes first.⁶ Such requests, however, will not ordinarily be granted.⁷ The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.⁸ Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.⁹

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

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.¹⁰ Based on the plea agreement upon which Inter-Tel's conviction is based, Inter-Tel pled guilty to mail fraud and other criminal offenses for activities in connection with its participation in the E-rate program with the San Francisco Unified School District ("SFUSD"). In connection with the mail fraud offense charged against Inter-Tel, the company admitted that it: (1) assisted consultants in falsely describing equipment to be supplied to SFUSD, by hiding equipment not eligible for funding under the E-rate program in order to have the program pay for it; (2) learned that consultants had submitted bills to the Universal Service Administrative Company ("USAC") with inflated prices, and did nothing to inform USAC that the prices had been

⁴ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. § 254; 47 C.F.R §§ 54.502-54.503; 47 C.F.R. § 54.521(a)(4).

⁵ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 C.F.R. § 54.521(e)(1).

⁶ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(4).

⁷ *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

⁸ 47 C.F.R. § 54.521(e)(5).

⁹ *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(5), 54.521(f).

¹⁰ *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. § 54.521(a)(6).

inflated by approximately \$26 million above the amounts originally bid for the project; and (3) did nothing to disclose to the SFUSD superintendent or school board that the funding requests to USAC had been increased over the original amounts, that there were inflated estimates in the bid documents, or that equipment ineligible for funding had been hidden in documents submitted to USAC. In connection with the antitrust crime charged against Inter-Tel, the company admitted that it: (1) participated in a conspiracy with one or more vendors of equipment and services related to telecommunications, Internet access and/or internal connections, with a purpose of suppressing and eliminating competition for E-rate projects; and (2) reached an agreement with its co-conspirators to frustrate the competitive process in the E-rate projects by allocating contracts and submitting fraudulent and non-competitive bids; and (3) submitted fraudulent and non-competitive bids in accordance with the conspiratorial agreement.¹¹ These actions constitute the conduct or transactions upon which this debarment proceeding is based.¹² Moreover, Inter-Tel's conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.¹³ Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, Inter-Tel's conviction requires the Bureau to commence debarment proceedings against it.

B. Debarment Procedures

Inter-Tel 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 Inter-Tel.¹⁵ Within 90 days of receipt of any opposition to Inter-Tel's suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide Inter-Tel with notice of its decision to debar.¹⁶ If the Bureau decides to debar Inter-Tel, its decision will become effective upon

¹¹ See *Inter-Tel Plea Agreement* at 5-7.

¹² *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. § 54.521(e)(2)(i).

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." 47 C.F.R. § 54.521(c). Such activities "include 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 schools and libraries support mechanism described in this section ([47 C.F.R.] § 54.500 *et seq.*)." 47 C.F.R. § 54.521(a)(1).

¹⁴ See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 C.F.R. §§ 54.521(e)(2)(i), 54.521(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. § 54.521(e)(5).

the earlier of Inter-Tel's receipt of a debarment notice or publication of the decision in the Federal Register.¹⁷

C. Effect of Debarment

If and when Inter-Tel's debarment becomes effective, it will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least 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 responses to the following address:

Romanda Williams
Federal Communications Commission
Enforcement Bureau
Investigations and Hearings Division
Room 4-C443
445 12th Street, S.W.
Washington, D.C. 20554

If Inter-Tel submits its response via hand-delivery or non-United States Postal Service delivery (e.g., Federal Express, DHL, etc.), please send the response to Ms. Williams at the following address:

Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

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. § 54.521(f).

¹⁸ *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 C.F.R. §§ 54.521(d), 54.521(g).

¹⁹ *Id.*

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If Inter-Tel has any questions, please contact Ms. Williams via mail, by telephone at (202) 418-1420 or by e-mail at romanda.williams@fcc.gov. If Ms. Williams is unavailable, you may contact Eric Bash by telephone at (202) 418-1188 and by e-mail at eric.bash@fcc.gov.

Sincerely yours,

William H. Davenport
Chief
Investigations and Hearings Division
Enforcement Bureau

cc: Leo P. Cunningham, Esq., Wilson Sonsini Goodrich & Rosati
Michael F. Wood, Esq., United States Department of Justice, Antitrust Division
Kristy Carroll, Esq., USAC