

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Inter-Tel Technologies, Inc.
File No. EB-05-IH-0012

NOTICE OF DEBARMENT

Adopted: June 21, 2006

Released: June 30, 2006

By the Commission: Commissioners Copps and Adelstein concurring and issuing separate statements.

TABLE OF CONTENTS

Table with 2 columns: Heading and Paragraph #. Includes sections I through V with sub-sections A, B, and C.

I. INTRODUCTION

1. This item debars Inter-Tel Technologies, Inc. ("Inter-Tel") from all activities associated with the schools and libraries universal service support mechanism, also known as the E-Rate program.

1 NEC-Business Network Solutions, Inc., Notice of Debarment and Order Denying Waiver Petition, FCC 06-91 (the "NEC Debarment Order").

filed in the record of the debarment proceeding; the mitigating steps Inter-Tel has taken to remedy its past conduct and prevent future problems with its participation in the E-Rate program; and the fact that Inter-Tel states that it has not participated in the E-Rate program during the past few years.

2. In addition, as another precaution to protect the integrity of the E-Rate program, this item imposes certain other measures to monitor Inter-Tel's compliance with the Commission's E-Rate rules during its first two funding years of re-entry into the E-Rate program. We order the Universal Service Administration Company ("USAC" or the "Administrator") to review with heightened scrutiny Inter-Tel's applications submitted during those two funding years. We further direct the Administrator to conduct automatic annual audits to ensure, during those funding years, that Inter-Tel complies with our rules, and that E-Rate funds are disbursed for their intended purpose.

3. We take these actions as part of our on-going commitment to protect the public interest and integrity of the E-Rate program in particular. We will continue to take appropriate enforcement actions against bad actors in the E-Rate program in future cases as warranted by the particular circumstances.

II. BACKGROUND

4. In the companion *NEC Debarment Order*, we describe in detail the critical goal of universal service to all Americans that Congress entrusted to the Commission in section 254 of the Act,² and the Commission's implementation of that directive. Those facts are set forth in summary fashion below and the more detailed recitation from the companion order is incorporated herein by reference.³

5. Through the universal service program, Congress sought to ensure that quality services and affordable rates are available throughout the country, including to specific underserved categories in our society: eligible schools and libraries, low-income consumers, rural health care providers, and consumers living in high-cost areas.⁴ At the direction of Congress, the Commission implemented the E-Rate program to provide discounts to schools and libraries for certain services, including local and long distance telephone service, Internet access, and internal connections.⁵ Because of the E-Rate program, millions of schoolchildren and library patrons now have access to telecom services and the Internet in their classrooms and libraries.

6. By Commission order, USAC administers the federal universal service fund ("USF") and the E-Rate program.⁶ Since 1997, it has disbursed approximately \$30.3 billion⁷ to the universal service programs, including nearly \$15 billion in commitments since 1998 to support the schools and libraries mechanism.⁸ As we explain in the *NEC Debarment Order*, the Commission has imposed numerous safeguards governing the disbursement of these E-Rate funds, including mandatory competitive bidding by service providers, certification requirements from authorized officers within the schools and libraries

² See 47 U.S.C. § 254.

³ *NEC Debarment Order* at ¶¶ 4-9.

⁴ See 47 U.S.C. § 254(b).

⁵ 47 U.S.C. § 254(b); 47 C.F.R. §§ 54.502-03.

⁶ Funding for the E-Rate and other universal service programs come from mandatory contributions to the USF by all telecommunications carriers providing interstate and international services. 47 U.S.C. § 254. Telecommunications carriers may pass the costs of these contributions along to consumers including through line-item fees on the consumers' monthly telephone bills. 47 C.F.R. § 54.712.

⁷ This amount was disbursed as of April 30, 2005.

⁸ See Universal Service - Schools and Libraries Support Mechanism Commitment Status Weekly Report, dated April 29, 2005.

about their services and vendors, and truthful and accurate billing for services by vendors.⁹ The *NEC Debarment Order* describes how we regularly review and update our rules as necessary to impose additional safeguards where we see the potential for mischief.¹⁰

7. In 2003 the Commission adopted a rule for automatic suspension and initiation of debarment proceedings against persons convicted of, or held civilly liable for, the commission or attempted commission of fraud and other similar offenses “arising out of activities associated with or related to the schools and libraries support mechanism.”¹¹ Suspension and debarment prevent the subject from participating in the E-Rate program and thereby protect the fund from persons adjudicated by courts of competent jurisdiction to have committed fraud against the program. As we explain in the *NEC Debarment Order*, the Commission implemented the debarment rule to protect the integrity of the program.¹² Moreover, the Commission explicitly rejected a government-wide standard where an entity “may” be debarred based on a conviction or civil judgment. Instead, the Commission adopted an *automatic* suspension and debarment process, concluding that such a rule is necessary to accomplish our goal of eliminating waste, fraud, and abuse.¹³

8. Pursuant to our debarment rule, the trigger for a Commission debarment proceeding is a civil judgment or criminal conviction in a court of competent jurisdiction “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.”¹⁴ We issue a notice of suspension and initiate debarment proceedings to ensure that the convicted person cannot continue to benefit from the program pending resolution of the debarment process.¹⁵ The suspended person or any interested party has 30 days to contest the suspension or proposed debarment, or seek to limit its scope.¹⁶ After receipt of such a request, the Commission must provide the petitioner notice of the decision to debar,¹⁷ prohibiting its participation in the E-Rate program, absent extraordinary circumstances.¹⁸ Since the debarment rule became effective, there have been eight convictions of individuals and four corporations related to their participation in the E-Rate program. After each conviction following enactment of the rule, the Commission initiated debarment proceedings

⁹ See *NEC Debarment Order* at ¶ 7.

¹⁰ *NEC Debarment Order* at ¶ 7, n.12.

¹¹ See 47 C.F.R. § 54.521; *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74. The rule defines a “person” as any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized. 47 C.F.R. 54.521(a)(6).

¹² See *NEC Debarment Order* at ¶ 8; *Second Report and Order*, 18 FCC Rcd 9225, ¶ 66.

¹³ *Second Report and Order*, 18 FCC Rcd 9227, ¶ 74; *Universal Service Fund Oversight NPRM*, 20 FCC Rcd at 11347-48, ¶¶ 97-8.

¹⁴ 47 C.F.R. § 54.521(c).

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

¹⁶ 47 C.F.R. §§ 54.521(e)(3), 54.521(e)(4).

¹⁷ 47 C.F.R. § 54.521(e)(5). Our rule states that notice of debarment will be provided within 90 days of receipt of information submitted by the respondent in response to a suspension notice. We may waive our own rule pursuant to 47 C.F.R. § 1.13 in the public interest. To allow the Commission to have a full opportunity to analyze this matter, we hereby waive the 90 day rule, as it applies to Inter-Tel’s responsive pleading, filed February 22, 2005.

¹⁸ 47 C.F.R. § 54.521(g).

against the perpetrators. The Commission has debarred the eight individuals,¹⁹ and the Commission today resolves the proceedings involving two of the four corporations.²⁰ The proceedings involving the other two corporations remain pending.²¹

A. Inter-Tel's Criminal Conviction

9. Inter-Tel sells telecommunications products and services. It is a wholly-owned subsidiary of Inter-Tel, Incorporated, a public company that designs, contracts for manufacture, and sells telecommunications products and services. The Inter-Tel case arises out of a DOJ civil and criminal investigation into, among other things, Inter-Tel's participation in the E-Rate program from December 1999 to March 2001.²² On January 5, 2005, Inter-Tel pled guilty to two crimes, an antitrust violation involving the submission of fraudulent and non-competitive bids, and a mail fraud violation involving the submission of inflated invoices to the Administrator.²³ Inter-Tel was the second corporation convicted of crimes related to the E-Rate program since the enactment of the Commission's debarment rule.

10. The scheme originated in 1999 when Inter-Tel agreed to pay a co-conspirators fee for all E-Rate business opportunities that the company brought to Inter-Tel and a fee for assistance in managing those opportunities.²⁴ In early 2000, Inter-Tel submitted a bid to the San Francisco Unified School District, including the co-conspirators' equipment in the bid. A co-conspirator ran the bidding and ensured that a portion of the contract was awarded to Inter-Tel. Thereafter, Inter-Tel assisted the co-conspirators in falsifying the application for funds by concealing video-conference equipment in the list

¹⁹ Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Oscar Alvarez, Connect2 Internet Network, Inc., DA 03-2706, Notice of Debarment, December 23, 2003 ("*Alvarez Debarment*"); Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Angelides, Connect2 Internet Network, Inc., DA 03-4088, Notice of Debarment, December 23, 2003 ("*Angelides Debarment*"); Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, to Duane Maynard, Howe Electric, Inc., DA 03-4089, Notice of Debarment, December 23, 2003 ("*Maynard Debarment*"); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Dotson, DA 04-3828, Notice of Debarment, December 6, 2004 ("*Dotson Debarment*"); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to John Henry Weaver, DA 05-1727, Notice of Debarment, June 23, 2005 ("*Weaver Debarment*"); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Haider Bokhari, DA 05-1730, Notice Debarment, June 23, 2005 ("*H. Bokhari Debarment*"); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Qasim Bokhari, DA 05-1728, Notice of Debarment, June 23, 2005 ("*Q. Bokhari Debarment*"); Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Ronald R. Morrett, DA 05-2349, Notice of Debarment, August 30, 2005 ("*Morrett Debarment*").

²⁰ One of the debarment proceedings involves Inter-Tel, and the other involves NEC. See *supra* note 1.

²¹ Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, to Tom Tsao, Vice President, Premio Inc., DA 06-489, Notice of Suspension and Initiation of Debarment Proceedings, February 28, 2006 ("*Premio Suspension Notice*"); Letter from Kris A. Monteith, Chief, Enforcement Bureau, to Robert J. Buhay, Chief Financial Officer, NextiraOne, LLC, DA 06-951, Notice of Suspension and Initiation of Debarment Proceedings, April 28, 2006 ("*NextiraOne Suspension Notice*").

²² See *United States v. Inter-Tel Technologies, Inc.*, Docket No. CR-04-399-CRB, Plea Agreement (N.D. Cal. filed Dec. 8, 2004) ("*Inter-Tel Plea Agreement*"); *United States v. Inter-Tel Technologies, Inc.*, Docket No. CR-04-399-CRB, Judgment (N.D. Cal. filed Jan. 12, 2005 and entered Jan. 13, 2005) ("*Inter-Tel Judgment*"); *United States v. Inter-Tel Technologies, Inc.*, No. CR 04-0399, Information (N.D. Cal. filed Dec. 6, 2004) ("*Inter-Tel Information*"). As we note in the *NEC Debarment Order*, the fraudulent schemes in which Inter-Tel and NEC participated, among other things, have been the focus of Congressional hearings. See *NEC Debarment Order* at ¶ 9.

²³ See *Inter-Tel Plea Agreement* at 2-7, 18 U.S.C. §§ 1341-2, 15 U.S.C. § 1.

²⁴ *Inter-Tel Plea Agreement* at 4.

of equipment and prices for Inter-Tel's E-Rate submission. Video-conferencing equipment was not eligible for E-Rate funding at that time.²⁵ In addition, a co-conspirator submitted inflated invoices to the Administrator, which Inter-Tel learned about, but took no steps to correct. Overall, the prices submitted for the San Francisco Unified Public School District were approximately \$26 million greater than the amounts that vendors bid.²⁶ During about the same period, Inter-Tel also participated in a similar criminal conspiracy to frustrate the competitive bidding process required by E-Rate program rules in two other school districts in two states.²⁷

11. As a result of these criminal schemes, the Administrator paid E-Rate funds to service providers that were not selected through the competitive bidding process, for equipment that was not eligible for E-Rate funding, and at prices that exceeded the original bid amounts of the services and equipment.²⁸ After an investigation, DOJ entered into a civil settlement with Inter-Tel on December 8, 2004.²⁹ Inter-Tel also pled guilty to and, on January 5, 2005, was convicted of two felony offenses,³⁰ one involving mail fraud, the other involving conspiracy to suppress and eliminate competition in violation of the Sherman Antitrust Act.³¹ For its conduct, Inter-Tel agreed to pay \$1,721,000 in criminal fines, and to provide \$7 million as restitution and damages,³² \$3.5 million of which is allocated to the Commission for the USF as full restitution. Inter-Tel also agreed to implement a compliance plan and remedial measures, and to cooperate with DOJ.³³

B. Procedural History

12. After the court entered the order accepting the plea agreement, Commission staff issued the Notice of Suspension to Inter-Tel on January 19, 2005.³⁴ The Notice of Suspension was published in the Federal Register on February 2, 2005. Inter-Tel filed a response to the Notice of Suspension on February 22, 2005, raising several arguments concerning the scope and duration of debarment.³⁵ Among other things, Inter-Tel argues that it has been subject to *de facto* debarment from the E-Rate program beginning in early 2003.³⁶

²⁵ 47 C.F.R. §§ 54.502-54.503.

²⁶ *Inter-Tel Plea Agreement* at 5-6.

²⁷ *Inter-Tel Plea Agreement* at 7, Exhibit A.

²⁸ *Inter-Tel Plea Agreement* at 3-7.

²⁹ See *Inter-Tel Plea Agreement*, Appendix B, Settlement Agreement.

³⁰ On January 5, 2005, the Court approved Inter-Tel's plea agreement and imposed judgment, which was entered on January 13, 2005. See *Inter-Tel Plea Agreement*; see also *Inter-Tel Judgment* at 1.

³¹ 18 U.S.C. § 1341, 15 U.S.C. § 1.

³² *Inter-Tel Plea Agreement* at 10.

³³ See *Inter-Tel Plea Agreement* at 10-11 and Exhibit C, Special Conditions of Probation, Settlement Agreement at 4.

³⁴ Letter from William H. Davenport, Chief, Investigations and Hearings Division, to Steven G. Mihaylo, Chief Executive Officer, Inter-Tel Technologies, Inc., Notice of Suspension and Proposed Debarment, 20 FCC Rcd 1372 (Inv. & Hearings Div., Enf. Bur. 2005) ("Notice of Suspension").

³⁵ Letter from Angela B. Styles, Miller & Chevalier Chartered, Counsel for Inter-Tel, to Romanda Williams, Investigation and Hearing Division, Enforcement Bureau, Federal Communications Commission, dated February 22, 2005 ("*Inter-Tel's Response*").

³⁶ See *Inter-Tel's Response* at 16-19.

13. On March 1, 2005, DOJ submitted a letter documenting Inter-Tel's cooperation throughout the investigation that resulted in the guilty plea.³⁷ The letter cites the utility of Inter-Tel's continued cooperation with the pending prosecutions of others and notes that Inter-Tel was the second corporate plea in the E-Rate context.³⁸ On March 15, 2005, the Colusa Unified School District ("Colusa") filed a letter that takes no position on Inter-Tel's proposed debarment but supports Inter-Tel's request to continue providing limited services and product sales for maintenance and repair in relation to the school district's phone system.³⁹

III. DISCUSSION

14. In general, the Commission's debarment rule states that upon criminal conviction of certain offenses arising out of activities associated with or related to the E-Rate program, the Commission shall suspend and debar the convicted person from the E-Rate program absent extraordinary circumstances.⁴⁰ The rules state that the time period for debarment is three years, although the rules contemplate that the Commission might modify the period in particular circumstances; the Commission might lengthen the period of debarment "if necessary to protect the public interest," and it might reverse or limit the scope or period of debarment "upon a finding of extraordinary circumstances."⁴¹ In implementing the debarment rule, the Commission stated that, in light of the statutory obligation to preserve and advance universal service, the Commission would set a very high threshold for parties claiming that their debarment was not warranted in circumstances in which a court of competent jurisdiction has concluded that the person has committed some form of fraud related to the E-Rate program.⁴² The *Second Report and Order* offers only one example of such "extraordinary circumstances" -- reversal of the conviction or judgment upon which the debarment was based.⁴³ As explained below, the conduct leading to Inter-Tel's criminal conviction merits a debarment period of at least three years, but in light of several important factors, we limit the debarment period to one year. We find, based on the unique circumstances of this case, imposing a one-year debarment period is in the public interest.

A. Debarment Decision

15. We debar Inter-Tel because it has been convicted of fraud-related offenses involving its participation in the E-Rate program, and there are no extraordinary circumstances sufficient to justify avoidance or waiver of debarment. On January 5, 2005, Inter-Tel pled guilty to and was convicted of two counts of criminal misconduct arising out of its conduct in the E-Rate program from 1999 to 2001. Specifically, Inter-Tel was convicted of an antitrust violation involving the submission of fraudulent and non-competitive bids and a mail fraud violation involving the submission of inflated invoices to the Administrator.⁴⁴ Pursuant to section 54.521(b) of our rules, the Commission "shall . . . debar" a company

³⁷ See Letter from Scott D. Hammond, Deputy Assistant Attorney General, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated March 1, 2005 ("DOJ Letter").

³⁸ See DOJ Letter at 1-2.

³⁹ Letter from Sheryl Bailey, Business Manager, Colusa Unified School District, to Ms. Romanda Williams, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 15, 2005 ("Colusa Letter").

⁴⁰ 47 C.F.R. § 54.521(b).

⁴¹ 47 C.F.R. § 54.521(f).

⁴² *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 64.

⁴³ 47 C.F.R. § 54.521(f).

⁴⁴ See *Inter-Tel Plea Agreement* at 5-7.

convicted of a crime involving fraud in the E-Rate program, absent extraordinary circumstances.⁴⁵ The offenses for which Inter-Tel was convicted are expressly listed as “causes for suspension and debarment” in section 54.521(c) of our rules.⁴⁶ Strict application of the debarment rule to remove bad actors from the program for a period of time is necessary to protect the integrity of the E-Rate program.⁴⁷ Accordingly, we conclude that Inter-Tel must be debarred to protect the program against additional waste, fraud, and abuse.⁴⁸

16. We also recognize, however, the existence of several important countervailing considerations that warrant a reduction in the standard debarment period. First, DOJ, as obligated by Inter-Tel’s Plea Agreement, filed a letter describing Inter-Tel’s cooperation with the investigation of the company.⁴⁹ DOJ states that Inter-Tel cooperated by “supplying information and documents as well as encouraging current or former employees to cooperate.”⁵⁰ DOJ characterizes this cooperation as enabling it “to expand [its] knowledge base to criminal behavior at school districts not previously covered in other pleas” and notes that “the nature, speed, and extent of Inter-Tel’s cooperation has been very helpful in developing [its] investigation to date.”⁵¹ A second countervailing consideration is, as DOJ notes, that “Inter-Tel has also agreed to an intensive, multi-year program of monitoring, training, and auditing of government procurement contracts” at its expense.⁵² Consistent with this, Inter-Tel asserts that it has implemented a comprehensive anti-fraud and antitrust compliance plan.⁵³ DOJ also notes that Inter-Tel has accepted full responsibility for its wrongdoing through payment of nearly \$9 million in fines, civil settlement, and restitution.⁵⁴ DOJ considered these actions to be valuable to this and future prosecutions.⁵⁵ Finally, we recognize that there has been a substantial period of time during which the company has not participated in the E-Rate program, since 2003.⁵⁶

17. Under these circumstances, including DOJ’s recognition of Inter-Tel’s cooperation, the company’s programmatic changes and remedial measures, and its lack of participation in the E-Rate

⁴⁵ 47 C.F.R. § 54.521(b).

⁴⁶ 47 C.F.R. § 54.521(c).

⁴⁷ See *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66.

⁴⁸ We also reject Inter-Tel’s contention that the Compliance Program it agreed to as part of the Special Conditions of Probation is sufficient to fully protect the program against additional waste, fraud and abuse. As noted above, debarment is the only way to ensure the absence of additional waste, fraud and abuse.

⁴⁹ See *DOJ Letter* at 1; *Inter-Tel Plea Agreement* at 14, ¶ 19.

⁵⁰ See *DOJ Letter* at 1.

⁵¹ *Id.* at 1.

⁵² See *DOJ Letter* at 1. Further, none of the individuals directly involved in the inappropriate conduct remains employed with Inter-Tel or its affiliates. *Id.*

⁵³ Inter-Tel Compliance Report Update to the FCC Enforcement Bureau and Office of the Inspector General, dated May 3, 2005; Inter-Tel Compliance Report to the FCC Enforcement Bureau and Office of the Inspector General, dated March 4, 2005; *Inter-Tel’s Response* at 11. Inter-Tel further submits that when its criminal conduct came to light, it promptly adopted management changes and introduced a policy requiring review of all new and ongoing E-Rate projects. *Inter-Tel’s Response* at 11.

⁵⁴ See *DOJ Letter* at 2.

⁵⁵ See *DOJ Letter* at 2.

⁵⁶ See *Inter-Tel’s Response* at 16-19. Inter-Tel states that USAC had deferred all of its invoices, including those that were not covered under the fraudulent conduct, once DOJ initiated an investigation on certain Inter-Tel E-Rate activities. *Id.*

program for a number of years, we limit Inter-Tel's debarment period to one year. We debar Inter-Tel for a longer period than NEC in the companion order we release today, principally because DOJ appears to value the cooperation of Inter-Tel less than that of NEC. As explained in the *NEC Debarment Order*, DOJ submitted not one but two letters in the record in that proceeding.⁵⁷ The first letter DOJ submitted in the NEC proceeding was similar to the letter DOJ submitted in the instant proceeding; DOJ submitted both letters as part of its obligation under the Plea Agreements with both corporations to advise agencies such as the Commission about each company's cooperation during its investigation of them, and DOJ described their cooperation in similar terms. As explained in the *NEC Debarment Order*, however, DOJ submitted a second letter in that proceeding that went beyond merely reciting NEC's cooperation, by explaining the importance of NEC's cooperation in particular as the *first* company to break ranks within its conspiracy. DOJ specifically notes that NEC's cooperation enabled DOJ to uncover conspiratorial misconduct that might never have been otherwise detected. Although DOJ notes that Inter-Tel's cooperation has been helpful, DOJ believes that NEC's cooperation, as the first company "to turn on its cooperators," is deserving of special consideration.⁵⁸

18. Thus, although we find that there are countervailing considerations in both cases to justify a reduction in the general debarment period of three years, we find under the unique facts and circumstances of each case that the public interest is best served by debarring NEC for a period of six months, while debarring Inter-Tel for a period of one year. We believe a period of one year adequately reflects credit for Inter-Tel's cooperation with DOJ, which was less important to DOJ than NEC's cooperation. Accordingly, we debar Inter-Tel Technologies, Inc. for one year from the effective date of this Order.

B. Additional Precautionary Measures

19. As an additional precaution to protect the E-Rate program, we put in place two monitoring measures to ensure Inter-Tel's compliance upon its re-entry into the E-Rate program. First, we order USAC to review with heightened scrutiny Inter-Tel's applications submitted during the first two funding years after re-entry.⁵⁹

20. Second, we order the Administrator to conduct automatic annual audits regarding Inter-Tel's compliance with the Act and the Commission's rules governing the E-Rate program, for each of the first two funding periods upon Inter-Tel's re-entry. We find these additional precautionary measures are necessary to ensure that E-Rate funds are used only for their intended purpose and that the program is not subject to additional waste, fraud, or abuse.

C. Inter-Tel's Remaining Arguments

21. We deny Inter-Tel's request to continue to receive E-rate reimbursement for limited products/service sales for the maintenance and repair of its systems for existing E-rate customers. Having determined that Inter-Tel's conduct warrants debarment, we find that our goal of preventing waste, fraud, and abuse compels us to deny Inter-Tel *any* reimbursement of E-rate funds during its period of debarment. We conclude that, during the debarment period, Inter-Tel is prohibited from receiving any E-rate reimbursement for limited services and products sales for maintenance and repair of its systems for pre-existing E-rate customers. Schools and libraries that currently have Inter-Tel system installations may

⁵⁷ See *NEC Debarment Order* at ¶¶ 23-25.

⁵⁸ See *NEC Debarment Order* at ¶ 25.

⁵⁹ See *Fifth Report and Order*, 19 FCC Rcd at 15822-23, ¶ 44. We note that the Commission currently is considering what particular requirements, if any, that it should apply in conducting heightened review of E-Rate program participants. See *Universal Service Fund Oversight NPRM*, 20 FCC Rcd at 11345, ¶ 91.

make alternative arrangements with other service providers for maintenance and repair products and services.⁶⁰

22. Similarly, we have considered but must deny Colusa's request that Inter-Tel be permitted "to continue to provide limited services and product sales for maintenance and repair"⁶¹ of a system installed in Colusa's district office and for Inter-Tel to install that system in four other schools. Although Colusa acknowledges that program rules permit it to change service providers to do such work, the school states that a change would impose a hardship. Colusa notes, however, that in updating its 2005 E-Rate bid application, which was due no later than February 2005, it was "referred to a third party dealer who could provide us with a bid for the Inter-Tel phone system we would require."⁶² It states that the need for a referral "caused a delay in getting a bid and an overall hassle dealing with a different party than Inter-Tel."⁶³ We are sympathetic to the inconvenience caused to Colusa by the need for the referral. It does appear, however, that the school was able to engage another party to bid on the project and therefore it does not appear that there is a pressing need for Inter-Tel's services in Colusa.

23. Inter-Tel argues that our rules are flawed because they do not credit carriers with time under suspension or *de facto* debarment.⁶⁴ We find these arguments are sufficiently addressed by our decision because we limit Inter-Tel's debarment period to one year.⁶⁵

24. Finally, we find that this debarment action is effective as to Inter-Tel Technologies, Inc., including any and all of its successors and assigns. Inter-Tel argues that its parent company, Inter-Tel, Inc., and other subsidiaries of Inter-Tel, Inc., should not be debarred because Inter-Tel Technologies, Inc. was the only entity to be convicted.⁶⁶ We agree and note that our debarment of Inter-Tel does not extend to Inter-Tel's parent or to other subsidiaries of Inter-Tel, Inc. as long as those companies are not successors or assigns of Inter-Tel Technologies, Inc.

IV. CONCLUSION

25. Based on the foregoing, Inter-Tel Technologies, Inc., including its successors and assigns, is hereby debarred from the E-Rate program for one year, beginning on the earlier of Inter-Tel's receipt of this Order, or its publication in the Federal Register.⁶⁷ During the period in which Inter-Tel will serve its debarment, Inter-Tel, including its successors and assigns, is prohibited from all 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

⁶⁰ We direct the Administrator to inform any schools and libraries with current applications that are affected by this debarment so that they may make alternative arrangements.

⁶¹ *Colusa Letter* at 1.

⁶² *Colusa Letter* at 1.

⁶³ *Colusa Letter* at 1.

⁶⁴ *See Inter-Tel's Response* at 14-19.

⁶⁵ We note that our decision to limit Inter-Tel's debarment period recognizes Inter-Tel's non-participation in the E-Rate program for a substantial period of time and sufficiently addresses the alleged suspension or *de facto* debarment arguments contained in Inter-Tel's pleading. *See Inter-Tel's Response* at 21 ("Inter-Tel Technologies respectfully requests that the Commission consider the totality of these circumstances when determining an appropriate period of debarment."). *See also supra* at ¶ 17.

⁶⁶ *Inter-Tel's Response* at 4-6.

⁶⁷ *See* 47 C.F.R. § 54.521(e)(5).

mechanism.”⁶⁸ We will continue to take appropriate actions in future cases as warranted by the particular circumstances to protect the integrity of the program.

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to section 54.521 of the Commission’s rules, 47 C.F.R. § 54.521, that Inter-Tel Technologies, Inc., including its successors and assigns, IS DEBARRED from the schools and libraries universal service support mechanism for one year, effective upon the earlier of Inter-Tel’s receipt of this Notice of Debarment or publication in the Federal Register.

27. IT IS FURTHER ORDERED that the Universal Service Administrative Company shall review with heightened scrutiny Inter-Tel’s applications submitted during the first two funding years upon its re-entry into the E-Rate program.

28. IT IS FURTHER ORDERED that the Universal Service Administrative Company shall conduct automatic annual audits on Inter-Tel’s E-Rate activities during the first two funding years upon its re-entry into the E-Rate program.

29. IT IS FURTHER ORDERED that the Enforcement Bureau shall send, by certified mail/return receipt requested, a copy of this Notice of Debarment to Angela B. Styles, Miller & Chevalier, Chartered, Counsel to Inter-Tel Technologies, Inc., 655 Fifteenth Street, NW, Suite 900, Washington DC 20005-5701, to John T. Nakahata, Harris, Wiltshire & Grannis, LLP, Counsel to Inter-Tel Technologies, Inc., 1200 18th Street, NW, Suite 1200, Washington, DC 20036.

30. IT IS FURTHER ORDERED that the Enforcement Bureau staff shall send, via email, a copy of this Notice on the release date to Angela B. Styles, astyles@milchev.com, and John T. Nakahata, JNakahata@harriswiltshire.com, Counsel to Inter-Tel Technologies, Inc.

31. IT IS FURTHER ORDERED, pursuant to section 54.521 of the Commission’s rules, 47 C.F.R. § 54.521, that this Notice SHALL BE PUBLISHED in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁸ See 47 C.F.R. §§ 54.521(a)(1), 54.521(a)(5), 54.521(d).

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Inter-Tel Technologies, Inc.*, File No. EB-05-IH-0012

The E-Rate program continues to provide the essential digital tools our children need for success in the Digital Age by connecting our schools and libraries to the Internet. Indeed, E-Rate is a lifeline for the hardest to reach and poorest children who are eager to learn and at risk of being left behind as technology moves forward. Like any great program, E-Rate cannot meet its full potential without regular review and care. And in this regard, there are many who deserve credit for their vigilance in rooting out waste, fraud and abuse from the program. The FCC, Department of Justice and E-Rate's Schools and Libraries Division have all stepped up to the plate to provide greater oversight of the program to ensure that limited resources find their rightful homes and are used most effectively.

The conviction of Inter-Tel Technologies, Inc. and today's debarment is further evidence of these efforts. Inter-Tel's activities were designed to bilk the E-Rate program of millions of dollars and it is certainly this type of case the FCC had in mind when three years ago it enacted its debarment requirements. I therefore concur in the decision to debar Inter-Tel from the E-Rate program for the period of one year. However, as I said when the Commission enacted the debarment rules, "we need to be dead serious about rooting out abuses." In point of fact, activities like those engaged in by Inter-Tel typically merit a lengthier debarment period. The Commission missed an opportunity here to send a sterner message to other corporations and individuals contemplating similar wrongdoings that such activities will not be tolerated by this Agency.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
CONCURRING**

Re: InterTel Technologies, Inc., Notice of Debarment, File No. EB-03-IH-0012, FCC 06-92 (June 21, 2006).

Since its inception, the universal service support mechanism for schools and libraries (commonly referred to as the E-rate program) has opened up a new world of learning and opportunity for millions of school children and library patrons. To ensure the continued success of the E-Rate program, we must remain committed to monitoring, auditing, reviewing and reinforcing the program. A critical part of our Commission oversight is the use of debarment, which prohibits bad actors from participating in the program. Accordingly, I support our decision in this Order to debar Inter-Tel Technologies from all involvement in the E-Rate program, one of our first such actions against a corporate defendant.

I concur in, rather than approve, this Order because I would have supported a longer debarment period. The Commission's rules provide for a debarment period of three years, which may be extended to protect the public interest or reduced upon a finding of extraordinary circumstances. I note that the Department of Justice has encouraged the Commission to exercise our debarment policy in a way that encourages early and complete cooperation from defendants, and I recognize that the Commission may take into account payment of fines and restitution, the length of time that a provider has not participated, and most importantly a high degree of cooperation with law enforcement. Even weighing these factors, the one-year debarment period adopted in this Order falls short, given the scope and seriousness of the fraud-related activities in this case. Strong enforcement encourages compliance, and penalties should be substantial enough to constitute more than just a cost of doing business. In this case, a longer debarment period would have sent a stronger and clearer message that fraud will not be tolerated.