

Lee is unavailable, you may contact William Davenport by telephone at (202) 418-1420 and by e-mail at [william.davenport@fcc.gov](mailto:william.davenport@fcc.gov).

Sincerely yours,

Maureen F. Del Duca,  
Chief, Investigations and Hearings Division,  
Enforcement Bureau.

cc: Mark S. Cohen, Cohen & Gressler, LLP,  
Kristy Carroll, USAC.

[FR Doc. 04-366 Filed 1-7-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

[DA 03-4089]

### 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. Duane Maynard from the schools and libraries universal service support mechanism for a period of three years.

**DATES:** Debarment commences on the date of Mr. Maynard's receipt of the debarment letter or January 8, 2004, whichever date comes first, for a period of three years.

#### FOR FURTHER INFORMATION CONTACT:

Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 6-C326, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418-1420 or e-mail at [diana.lee@fcc.gov](mailto:diana.lee@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission debarred Mr. Duane Maynard from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.521 and 47 CFR 0.111(a)(14). The Commission previously suspended Mr. Maynard from the schools and libraries mechanism, pending debarment proceedings. See 68 FR 56839, October 2, 2003. Attached is the debarment letter, *Notice of Debarment*, DA 03-4089, which was mailed to Mr. Maynard and released on December 23, 2003, that in turn attached the suspension letter, *Notice of Suspension and of Proposed Debarment Proceedings*, DA 03-2882. The complete text of the debarment letter, including attachment 1, the suspension letter, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554.

In addition, the complete text may be retrieved from the FCC's Web site at <http://www.fcc.gov>. The text may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Federal Communications Commission.

**William H. Davenport,**

*Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.*

The debarment letter, which attached the suspension letter, follows:

December 23, 2003.

[DA 03-4089]

Via Certified Mail, Return Receipt Requested.

Mr. Duane Maynard,  
Howe Electric, Inc., 4682 E. Olive Ave.,  
Fresno, CA 93702.

Re: Notice of Debarment, File No. EB-03-IHD-0387

Dear Mr. Maynard: Pursuant to section 54.521 of the rules of the Federal Communications Commission (the "Commission"), by this Notice of Debarment you are hereby debarred from the schools and libraries universal service support mechanism for a period of three years.<sup>1</sup>

On September 11, 2003, the Enforcement Bureau (the "Bureau") sent you a Notice of Suspension and Proposed Debarment (the "Notice of Suspension").<sup>2</sup> That Notice of Suspension was published in the **Federal Register** on October 2, 2003.<sup>3</sup> The Notice of Suspension suspended you from the schools and libraries universal service support mechanism<sup>4</sup> and described the basis for your proposed debarment,<sup>5</sup> the applicable debarment procedures,<sup>6</sup> and the effect of debarment.<sup>7</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>8</sup> The Commission did not receive any such opposition.

<sup>1</sup> See 47 CFR 0.111(a)(14), 54.521.

<sup>2</sup> Letter from Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Duane Maynard, Notice of Suspension and Proposed Debarment, 18 FCC Rcd 18684 (2003).

<sup>3</sup> 68 FR 56839 (Oct. 2, 2003).

<sup>4</sup> See Notice of Suspension, 18 FCC Rcd at 18684-85 (imposing suspension pending the Bureau's final debarment determination) (Attachment 1).

<sup>5</sup> See *id.*, 18 FCC Rcd at 18685-86 (describing the basis for your proposed debarment).

<sup>6</sup> See *id.*, 18 FCC Rcd at 18686 (describing procedures to contest proposed debarment).

<sup>7</sup> See *id.* (describing effect of proposed debarment).

<sup>8</sup> See 47 CFR 54.521(e)(3) and (4). That date occurred no later than November 1, 2003. See *supra* note 3.

As discussed in the Notice of Suspension, on August 26, 2003, you pled guilty to participating in a combination and conspiracy with West Fresno Elementary School District representatives, a consultant, and others representing potential competitors, on behalf of your employer, Howe Electric Inc. ("Howe"), so that: (1) Howe would be the successful bidder to provide goods and services for the schools and libraries E-Rate project in the district, while no other co-conspirator companies would bid for the project; (2) certain co-conspirator companies would be Howe's subcontractors; and (3) any competing bids would be disqualified as nonresponsive.<sup>9</sup> Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.521(c) of the Commission's rules.<sup>10</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>11</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>12</sup>

Sincerely yours,

William H. Davenport,  
Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kenneth Alan Reed, Law Office of Kenneth Alan Reed (Via Certified Mail, Return Receipt Requested), Kristy Carroll, USAC (Via e-mail).

#### Attachment 1

September 11, 2003.

[DA 03-2882]

Via Certified Mail, Return Receipt Requested.

Mr. Duane Maynard,  
Howe Electric, Inc., 4682 E. Olive Ave.,  
Fresno, CA 93702.

Re: Notice of Suspension and of Proposed Debarment, File No. EB-03-IHD-0387

Dear Mr. Maynard: The Federal Communications Commission ("FCC" or "Commission") has received notice of your August 26, 2003 conviction pursuant to 15 U.S.C. 1 for bid rigging.<sup>13</sup> Consequently,

<sup>9</sup> Notice of Suspension, 18 FCC Rcd at 18685.

<sup>10</sup> Notice of Suspension, 18 FCC Rcd at 18685-86; 47 CFR 54.521(c).

<sup>11</sup> See Notice of Suspension, 18 FCC Rcd at 18686.

<sup>12</sup> See 47 CFR 54.521(a)(1), 54.521(a)(5), 54.521(d); Notice of Suspension, 18 FCC Rcd at 18686.

<sup>13</sup> Any further reference in this letter to "your conviction" refers to your August 26, 2003 guilty plea and conviction of this count based on your participation, on behalf of your employer, Howe Electric, Inc., in a "combination and conspiracy to suppress bidding for the West Fresno Elementary School District E-Rate project and to allocate among conspirators the responsibility for supplying goods and services for that project." See *United States v.*

Continued

pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism. In addition, the Enforcement Bureau ("Bureau") hereby notifies you that we are commencing debarment proceedings against you.<sup>14</sup>

### I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules,<sup>15</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>16</sup> Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.<sup>17</sup>

Suspension is immediate pending the Bureau's final debarment determination. 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>18</sup> Such requests, however, will not ordinarily be granted.<sup>19</sup> The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.<sup>20</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>21</sup>

### II. Notice of Proposed Debarment

#### A. Reasons for and Cause of Debarment

The Commission's rules establish 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

*Maynard*, Criminal Docket No. 1:03cr5325, Information at 2-3 (E.D.Cal. filed August 19, 2003) ("Maynard Felony Information"); *United States v. Maynard*, Criminal Docket No. 1:03cr5325, Plea Agreement at 6-7 (E.D.Cal. filed August 26, 2003) ("Maynard Plea Agreement").

<sup>14</sup> 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

<sup>15</sup> 47 CFR 54.521(a)(4); *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225-27, ¶¶ 67-74 (2003) ("Second Report and Order"); *id.* at Appendix B, 18 FCC Rcd at 9263-65.

<sup>16</sup> *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502-54.503; 47 CFR 54.521(a)(4).

<sup>17</sup> *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

<sup>18</sup> *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

<sup>19</sup> *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

<sup>20</sup> 47 CFR 54.521(f).

<sup>21</sup> See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

mechanism" from receiving the benefits associated with that program.<sup>22</sup> On August 26, 2003, you admitted to participating in a combination and conspiracy with West Fresno Elementary School District representatives, a consultant and others representing potential competitors, on behalf of your employer, Howe Electric, Inc.<sup>23</sup> Specifically, you admitted that you and the other co-conspirators combined, conspired, and agreed that: (1) Howe Electric, Inc. would be the successful bidder to provide goods and services for the schools and libraries E-Rate project in the district, while no other co-conspirator companies would bid for the project; (2) certain co-conspirator companies would be Howe Electric's subcontractors; and (3) any competing bids would be disqualified as nonresponsive.<sup>24</sup> These actions constitute the conduct or transactions upon which this debarment proceeding is based.<sup>25</sup> Moreover, your 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.<sup>26</sup> Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

#### B. Debarment Procedures

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>27</sup> Absent extraordinary circumstances, the Bureau will debar you.<sup>28</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>29</sup> If the Bureau

<sup>22</sup> *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 66.

<sup>23</sup> See *United States v. Maynard*, Criminal Docket No. 1:03cr5325, Docket Proceedings (E.D.Cal. filed August 26, 2003).

<sup>24</sup> See *Maynard Felony Information* at 3; *Maynard Plea Agreement* at 6-7. The conspiracy violated the Commission's competitive bid requirements for telecommunications services supported by the schools and libraries E-Rate program. 47 CFR 54.504.

<sup>25</sup> *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

<sup>26</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." 47 CFR 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 CFR] § 54.500 et seq.)." 47 CFR 54.521(a)(1).

<sup>27</sup> See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

<sup>28</sup> *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

<sup>29</sup> See *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of its decision in the **Federal Register**.<sup>30</sup>

#### C. Effect of Debarment

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 at least three years from the date of debarment.<sup>31</sup> The Bureau may, if necessary to protect the public interest, extend the debarment period.<sup>32</sup>

Please direct any responses to the following address:

Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 6-C326, 445 12th Street, SW., Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (e.g., Federal Express, DHL, etc.), please send your response to Ms. Lee at the following address:

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

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 William Davenport by telephone at (202) 418-1420 and by e-mail at [william.davenport@fcc.gov](mailto:william.davenport@fcc.gov).

Sincerely yours,  
Maureen F. Del Duca,  
Chief, Investigations and Hearings Division,  
Enforcement Bureau.

cc: Kenneth Alan Reed, Law Office of Kenneth Alan Reed, Kristy Carroll, USAC.  
[FR Doc. 04-365 Filed 1-7-04; 8:45 am]

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 13, 2004, to consider the following matters:

#### Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single

<sup>30</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 54.521(f).

<sup>31</sup> *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

<sup>32</sup> *Id.*