



November 15, 2019

Via ECFS

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Modernizing Suspension and Debarment Rules* (GN Docket No. 19-309)

Dear Ms. Dortch:

On November 13 I spoke with Michael Carowitz, Special Counsel to Chairman Pai and on November 15 I spoke with Paula Silberthau and Chin Yoo of the Office of the General Counsel. During both calls I offered support for the Commission's draft *Notice of Proposed Rulemaking*¹ in the above referenced proceedings and proposed two suggestions for additional questions the Commission should add to the Draft NPRM.

First, I noted that the standard for suspension or debarment under the current debarment rules is "conviction of or civil judgment for" misconduct "arising out of activities associated with or related to" the USF programs.² The Draft NPRM proposes to give the FCC additional discretion to debar when the FCC identifies violations "so serious as to affect the integrity of [the] program" or for "[a]ny other cause of so serious or compelling a nature that it affects [the party's] present responsibility."³ While the Draft NPRM seeks comment on *additional* factors that might lead to suspension or debarment in paragraphs 67-70, it does not seek comment on whether the Commission should consider adopting *alternative* substantive standards. I suggested that the Commission seek comment on both additional factors and alternative standards for suspension or debarment. I also suggested that the Commission should seek comment on whether basing suspension or debarment on a Notice of Apparent Liability (NAL) as suggested in paragraph 15 would violate the prohibition in section 504(c) of the Communications Act on using a non-final unpaid NAL to a person's prejudice in any other FCC proceeding.⁴

Second, the Draft NPRM recognizes that "officials who conduct suspension and debarment proceedings should be neutral" and seeks comment on whether that official should be the Chief of the Enforcement Bureau, the Managing Director, or some other Commission

¹ *Modernizing Suspension and Debarment Rules*, GN Docket No. 19-309, Public Draft Notice of Proposed Rulemaking (Oct. 29, 2019) (*Draft NPRM*), <https://docs.fcc.gov/public/attachments/DOC-360517A1.pdf>.

² 47 C.F.R. § 54.8.

³ Draft NPRM at ¶ 6.

⁴ 47 U.S.C. § 504(c).

official.⁵ I suggested that the item also seek comment on whether an Administrative Law Judge or the full Commission should be the suspending or debarring official.

Please direct any questions to the undersigned.

Sincerely,

/s/ Patrick R. Halley
Patrick R. Halley
Senior Vice President, Policy & Advocacy

cc: Michael Carowitz
Paula Silberthau
Chin Yoo

⁵ Draft NPRM at ¶¶ 79-81.