



October 18, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Comments of Trillion Partners, Inc. on FCC-05-195; Comprehensive Review of Universal Service Fund Management, Administration, and Oversight

Dear Ms. Dortch:

Please enter the attached Comments of Trillion Partners, Inc. in the files of the above-referenced Docket.

This letter and attached Comments are also being copied to the following e-mail addresses:

One (1) courtesy copy to:
Warren Firschein
Federal Communications Commission
Telecommunications Access Policy Division
Wireline Competition Bureau
445 12th Street, S.W., Room 5-B442
Washington, D.C. 20554
warren.firschein@fcc.gov

One (1) courtesy copy to:
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One (1) copy to:
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445 12th Street, S.W., Room CY-B402
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Thank you for your kind assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott Smyth".

Scott Smyth
Vice President Legal and Regulatory

Trillion Partners, Inc.
9208 Waterford Centre Blvd., Suite 150
Austin, TX 78758
scott.smyth@trillion.net

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

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight)	WC Docket No. 05-195
)	
Federal- State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
Rural Health Care Support Mechanism)	WC Docket 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21
)	

**COMMENTS OF TRILLION PARTNERS, INC.
ON THE NOTICE OF PROPOSED RULEMAKING AND
FURTHER NOTICE OF PROPOSED RULEMAKING (FCC 05-124)**

Trillion Partners, Inc. submits these comments in response to the Notice of Proposed Rulemaking (NPRM) released June 14, 2005. The NPRM, FCC 05-124, invites interested parties to file comments regarding a comprehensive review of the Universal Service Fund, including the Schools and Libraries Support Mechanism (commonly known as the “E-rate” program).

Trillion Partners, Inc. provides Priority One eligible Wide Area Network services using primarily point-to-point wireless connections between eligible school and library sites. Trillion Partners currently services the western half of the United States.

NOTE on the structure of these comments: In order to facilitate the Commission’s consideration, these comments include an Executive Summary and are organized according to applicable sections of the NPRM.

Executive Summary

Trillion Partners supports the Schools and Libraries Division of the Universal Service Administrative Company (“SLD”). The SLD has successfully processed the funding of billions of dollars to deserving schools and libraries throughout the country. By any measure, the “E-Rate program” as a whole has been a success. The scope of problems in the program, especially those falling under the category of “fraud, waste, and abuse,” is relatively small. Sadly, the relatively small percentage of misspent dollars has captured far more attention than the vast majority of money which has been properly allocated under the program. Furthermore, from the perspective of a service provider who competes with the incumbent local exchange carriers (“ILECs”), it is helpful that USAC and its subcontractor (NTS) are not under the immediate direction and control of an organization whose sole constituency is ILECs.

These comments focus on the Commission’s goals of streamlining and simplifying the process while not inviting more opportunities for fraud, waste, and abuse. Specifically, these comments focus on four basic themes:

1. Increase predictability and stability for stakeholders.
2. Streamline and simplify the process of obtaining funds.
3. Reduce the reviewing times throughout the process.
4. Create new punitive fines for bad actors who intentionally violate rules.

- **Increase predictability and stability for stakeholders.**

Trillion Partners advocates the Commission’s proposal to codify USAC’s rules. This should reduce the ad hoc nature of revisions to rules which make the program less predictable for annual budgeting. Furthermore, rules should be slow to change once they have been enacted so stakeholders can make decisions over a multi-year period. Rules that are changed should always consider grandfathering existing parties’ arrangements.

The SLD’s internal process of determining whether funding should be approved should stop once a Funding Commitment Decision Letter has been issued. The processing of Forms 486, 472, and 474 should be virtually automated. Repetitive reviews after a funding commitment has been issued deny applicants and service providers the crucial predictability necessary to commence construction projects for eligible Priority One services.

- **Streamline and simplify the process of obtaining funds.**

Trillion Partners supports the Commission’s proposal to require a single funding application (Form 471) at the beginning of a multi-year service arrangement. However, coupled with this must be a deadline for the initial review and approval of such applications. Such a deadline could be slightly longer than those for single year applications. The review should not be allowed to extend indefinitely as is the case today. If there is no deadline imposed on such review, there would likely be a protracted delay in review because of the perceived significance of a multi-year approval.

There should be a presumption that applicants are trying to do the right thing and that their application should not be denied. Then, enforcement actions should be given greater attention.

Regarding enforcement actions, the elements of an enforcement action should include a *mens rea* element, specifically that an applicant or service provider “intentionally” violated a particular rule. Stakeholders should not be denied funding, or be subject to repaying “commitment adjustments” years after the fact, simply because of some accidental, technical error. The standard for review must also be codified.

- **Reduce the reviewing times throughout the process.**

The Commission has invited comment on whether deadlines should be imposed on USAC in its processing of applications and appeals. Trillion Partners strongly supports imposing clear, reasonable deadlines on USAC, but only if such deadlines are coupled with a highly public monitoring of the rate of approvals and denials. Our primary concern is that the imposition of new deadlines to approve or deny will be followed by a dramatic increase in the rate of denials. USAC has a tremendous workload, and the imposition of internal deadlines will predictably put strains on its ability to adequately perform its review function. The logical way to meet such deadlines, and to avoid the much feared approval of applications with fraud, waste, and abuse, would be to default to a denial. The imposition of deadlines must not result in an increase of denials.

- **Create new punitive fines for bad actors who intentionally violate rules.**

Once the approval process is made easier, the penalties for intentional acts of fraud, waste, and abuse should be enhanced. First, the element of intent must be added to the required elements for an enforcement action. The program suffers from too many heartbreaking stories of well-meaning school district employees who were stung by an innocent, inadvertent error. The standard for denial must be shifted to those who commit bad acts intentionally. Then, for those who intentionally commit bad acts, the Commission should be particularly firm in assessment of penalties and fines. For those who commit unintentional errors, their primary punishment would simply be having their application placed at the “end of the queue” of review once the error is corrected.

Also, an additional punishment should be added to the current regime of commitment adjustments, the “redlight rule,” and debarment: fines in an amount similar to punitive damages. The amount of such fines should be reasonably calculated to deter future bad acts by the person or entity in question. The amount of the fine would be appropriately scalable: The larger the entity and more egregious the violation, the larger the fine. The amount of such punitive damages should be similar to the punitive damages in civil suits, such as products liability cases. We understand the authority to impose such punitive fines may require an amendment of the Telecommunications Act by Congress.

Administrative Procedures (NPRM, paragraph 22)

The Commission seeks comment on whether it should codify certain USAC administrative procedures in the Commission's rules. The Commission believes that greater clarity in USAC's rules and procedures will help reduce ministerial errors. The Commission asks that commenters consider whether any proposal for the Commission to codify USAC administrative procedures would facilitate or restrict the ability of the administrator to perform its duties in a flexible and responsive way.

- **Codification would reduce the guesswork for stakeholders and the workload for the Commission.**

Codification of USAC administrative procedures by the Commission is an excellent suggestion which Trillion Partners strongly supports. We suggest that the Commission illuminate the many "unwritten rules" which abound in the program. Codification would also lead to consistency in program rules, contrary to the current system where they may change ad hoc without notice.

- **USAC should be given power to publish non-binding letter rulings.**

It would be helpful if simple letter rulings were published as non-binding positions put forward by USAC staff. This would greatly open up the program to greater clarity and predictability, while not significantly increasing the workload of the Commission. The Commission could request a particular letter ruling be reversed if it finds there is an improper ruling or conclusion. Although this could create some additional work initially, it should greatly reduce the workload as time passes because the stakeholders in the program would know where they stand and how to proceed. Applicants and Service Providers would not repeatedly ask the same questions because the answers would be available. These letter rulings would be "non-binding" in order to avoid the necessity of having the Commission staff preemptively rule on each issue. Regarding a response to an argument that this would be an unlawful delegation of powers to USAC, the Commission could clearly establish it is not bound by such rulings and reserves its right to reverse any particular letter ruling *sua sponte* at any time or on appeal. Standing for an appeal would be limited to the stakeholders subject to the letter ruling. The bottom line is the more information made public about what USAC is "thinking," the better.

Program Management (NPRM, paragraph 33)

The Commission seeks comments on whether the E-rate and Rural Health Care programs should emulate the formulaic approach of the High Cost and Low Income programs. The Commission suggests it might change its rules to use a formula to distribute funds directly to schools and libraries according to their size and allow funds to be used in a more flexible way.

- **The goal of simplicity is laudable, but issuing E-rate funds on a formulaic basis would have too many negative unintended consequences.**

A formulaic approach used in the High Cost and Low Income programs does not transfer to the E-Rate and Rural Health Care programs for two key reasons:

1. The E-Rate and Rural Health Care programs are designed to support evolving and complex services, including “advanced telecommunications and information services” for schools and libraries, and telemedicine for rural health care providers, while the High Cost and Low Income programs are designed to support clearly defined “basic” telephone service.
2. The E-Rate and Rural Health Care programs are designed to provide funds directly to schools, libraries and health care providers, while the High Cost and Low Income programs are designed to provide funds to local exchange carriers who have qualifying subscribers.

A formulaic approach would likely be disruptive to schools and libraries. Many of the important benefits of the current system for schools and libraries would be lost under a formulaic approach. Such benefits include:

- Technology planning
- Confirmation that funds are used for “advanced services” (The Eligible Services List)
- Competitive bidding (Form 470)
- Cost-effectiveness (Form 471 criteria)

Also, depending on the level of simplicity of a formulaic approach, it is possible that certain schools and libraries would automatically receive funding year after year when they already have their technology needs met, reducing the amount available to schools and libraries who truly need the funding. As complex as the current system is, it remains preferable to the likely unfairness of applying a formulaic approach similar to the High Cost and Low Income programs with dissimilar goals.

Application Process (NPRM, paragraphs 37 and 41)

The Commission invites suggestions for streamlining the application process, such as shortening, combining, or eliminating forms, tentatively concluding that it should adopt a streamlined multi-year application for priority 1 services.

- **Shorten the Eligible Services List and keep it up to date to keep pace with an evolving market expectation of what constitutes “advanced telecommunications and information services.”**

The current Eligible Services List includes many out of date references and is organized in a manner which appears to favor incumbent local exchange carriers. The current Eligible Services List also contains numerous internal inconsistencies where one service is listed as ineligible, but the same service under a different name is listed as eligible. The list should be shortened to use

more global product descriptions and it should be truly kept up to date. The Commission should continue to ensure that changes to the list have a prospective effect, with existing eligible services being grandfathered.

- **Rename the Forms.**

The E-Rate forms are used by school districts and libraries who are often novices to the Commission's processes. The forms should be given intuitively descriptive names to ease their use, and potentially increase more schools and libraries who have been too intimidated by the process to pursue obtaining E-Rate funds for their children and patrons. For example, the Form 470 serves a useful function in ensuring small schools and libraries have some mechanism for creating a competitive bidding process when no local one exists. The Form, however, should be given a more intuitive name so schools, libraries, and service providers, can easily understand its purpose. The name could include "E-Rate RFP," or "E-Rate Bid Solicitation Form."

USF Disbursements (paragraph 60)

The Commission seeks comment on whether it should adopt rules to better ensure that the disbursement process is administered in an efficient, effective, and competitively neutral manner. The Commission observed that the Administrator sometimes denies payment on submitted invoices even though the original application had been approved and asks whether specific criteria or guidance would help the invoice review process.

- **Once an application for funding has been approved (when a Funding Commitment Decision Letter is issued), SLD internal review should cease and the process leading to payment should be fully automated.**

The SLD has established an internal procedure of reviewing eligibility for funding at least twice during the process leading to issuance of funds: 1) prior to the issuance of a funding application approval ("FCDL"); and 2) after the filing of an invoice form ("Form 474") from the service provider. The second review is unnecessary, redundant, and appears highly unfair. If there is some information required at the time an invoice is submitted, it should be included in the Form 474. There should be no additional human intervention at the time an invoice is submitted because any confirmation needed that the amount of the invoice matches, or is less than, the amount approved in the FCDL, should be easily automated.

The Form 474 should be enhanced to include: a) a new section that requests details about the invoice sent to the applicant from the service provider; and b) a certification from the service provider that the amount and service description in this new section are true and correct.

Once the post-FCDL process is automated, reasonably short deadlines should be set for the SLD to process Forms 474 and 472. Random spot audits should allow for confirmation of the integrity of the system. Violators who are found to have intentionally violated their certifications (e.g., by intentionally sending invoices to the applicant with amounts or service descriptions that are different than those listed in the Form 474 or 472) should be subject to strong penalties.

- **Give service providers secure online read-only access to their SLD invoice accounts.**

The SLD should give service providers direct access to the database showing their invoicing details using encrypted, username and password access.

Measures to Deter Waste, Fraud, and Abuse (paragraphs 90 and 91)

The Commission seeks comment on whether a ceiling on the total amount of funding that an applicant can request would be an effective measure of deterring waste, fraud, and abuse. The Commission also seeks comment on whether it should adopt specific rules governing higher scrutiny for previous rule violators and what requirements, if any, it should apply to the administrator's conduct of heightened review of E-rate program participants.

- **Establish new punitive fines for bad actors.**

Once the approval process is made easier, the penalties for intentional or knowing acts of fraud, waste, and abuse should be enhanced. The current regime of commitment adjustments, the "redlight rule," and debarment should be increased to include fines in an amount similar to punitive damages, which would be reasonably calculated to deter future bad acts by the person or entity in question. We understand the authority to impose punitive fines may require an amendment of the Telecommunications Act by Congress.

- **Establish clear standard for violations, requiring "intent" to be element of action against program violators.**

There should be a presumption that applicants are trying to do the right thing and that their application should not be denied. Then, enforcement actions should be given greater attention. Regarding enforcement actions, the elements of an enforcement action should include a *mens rea* element, specifically that an applicant or service provider "intentionally" violated a particular rule. Stakeholders should not be denied funding, or be subject to repaying "commitment adjustments" years after the fact, simply because of some accidental, technical error. The standard for review must also be codified.

Conclusion

Trillion Partners respectfully requests the Federal Communications Commission consider the above-filed comments in its deliberations in this Notice of Proposed Rulemaking.

Respectfully submitted,

Trillion Partners, Inc.

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October 18, 2005