**Trillion Partners, Inc.**
**9208 Waterford Centre Blvd., Suite 150**
**Austin, Texas 78758**

June 29, 2010

Ms. Pina Portanova
USAC Schools and Library Division
Universal Service Administrative Company *Delivered via email*
2000 L Street, N.W., Suite 200
Washington, D.C. 20036
pportan@sl.universalservice.org

Federal Communications Commission
Attention: Gina Spade, Deputy Division Chief
Telecommunications Access Policy Division *Delivered via Electronic Comments Filing System*
445 12th Street SW
Washington, DC 20554

RE: Response to USAC and Appeal to FCC: Callisburg ISD letter (6/15/10)

Dear Ms. Portanova and Ms. Spade,

On behalf of the Board, investors and management team of Trillion Partners, Inc., please accept this response to the Intent to Deny Letter from USAC to Callisburg ISD dated June 15, 2010. Additionally, please accept this letter as a simultaneous appeal to the FCC of the Intent to Deny, requesting that all of the applications as referenced in such letter be approved for funding.

Due to the magnitude of the proposed denial and the substantial delay in the issuance of USAC's currently proposed intent to deny, Trillion and all of its affected customers are under a severe hardship and request expedited resolution of this matter.

Trillion Partners is responding to this letter because students in Texas will likely be denied crucial educational access. Trillion constructed a major network with its customers relying on the consistent approvals by USAC in years past. The approval of this application is needed in order to continue to support these children who rely every school day on Trillion's embedded investment of this broadband asset.

During a phone conference on June 9, 2010, Mr. Scott Barash indicated that our comments would be accepted and included as part of USAC's review of the application. This must in no way be considered a delay in the FCC's immediate consideration of this urgent appeal.

## Background

Callisburg Independent School District is a small rural school district in the state of Texas. The school district has been a customer of Trillion since 2005. All of the questions that USAC has in regards to this school district are for a contract for a bandwidth upgrade and additional services that occurred in 2008.

## Response to Questions

Date: June 15, 2010

Don Metzler
Callisburg Independent School District
(940) 665-9930
(940) 612-4196
Application Number(s): 662878, 721400

**Response Due Date: 6/30/10**

We are in the process of reviewing Funding Year 2009 and FY 2010 Form(s) 471 to ensure that they are in compliance with the rules of the Universal Service program.

Funding Year 2009 Application 662878, FRNs 1810198, 1810192 and Funding Year 2010 Application 721400, FRNs 1956812, 1956815, and 195818 will be denied for the following reasons:

Based on the documentation that has been provided to USAC, the entire Funding Request Numbers (FRNs) 1810198, 1810192, 195812, 195815, and 195818 will be denied because Callisburg Independent School District did not conduct a fair and open competitive bidding process. The Form 470 (No. 703210000685117) associated with these FRNs was posted on September 19, 2008 and the Contract Award Date was December 19, 2008.

- The documentation provided indicates that Jeff Threadgill (Callisburg) accepted meals from Trillion prior to the process Callisburg conducted to select a service provider to provide the goods and services that were included in the posted Form 470. Specifically, Trillion has provided documentation for the following meals that were accepted and attended by Jeff Threadgill. On February 5, 2008, Jeff Threadgill attended the Trillion Customer Dinner at the Moonshine Patio Bar and Grill in Austin, Texas. According to Trillion documents, the total cost of the dinner was $686.45 ($38.13/person). On May 2, 2008 Jeff Threadgill and Jeff Meadows (Trillion) had lunch. The price was $68.62 ($34.31/person). The meals' values exceed the federal gifts standards of $20/person/occasion not to exceed $50/person/per calendar year. . The meals occurred in the months prior to Callisburg's posting of its Form 470 (Application No. 703210000685117) on September 19, 2008 and

subsequent award of the contract to Trillion on December 19, 2008. Based on this information, it appears that you did not conduct a fair and open competitive process, free from outside influence. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

The facts provided in the letter from USAC list events that, in each instance, are in full compliance with state and local procurement laws and regulations. As has been provided in a letter to Scott Barash of USAC dated June 8, 2010, Trillion has already described how the FCC guidelines regarding meals, gifts and gratuities are based on state and local procurement rules, not a separate federal standard. Also as we previously outlined, Trillion is aware of the Notice of Proposed Rulemaking dated May 20, 2010, soliciting public comment on a potential rule which would extend current rules for Executive Branch employees to employees of governmental entities that participate in the E-Rate program. As of this writing, not only has this new proposed rule not yet been approved, it is definitely not being proposed to apply retroactively. This means that this proposed rule did not and will not apply to the facts you describe to form the basis for the proposed denial. Furthermore, Trillion currently operates under a strict Code of Conduct which would fully comply with the FCC's proposed guideline. In all instances, the facts you describe regarding Trillion did not affect the competitive bidding process and were in full compliance with all applicable competitive bidding and procurement requirements.

The amounts spent on meals or other routine business expenses were trivial and could not have possibly influenced a decision that would ultimately be made by the School Board. Furthermore, no member of the School Board received any such expense. The fact is, Trillion invested $131,276 in capital to construct a network providing critical services with a total contract value of $1,241,499, while the amount of the routine business meals and expenses only amounted to $140 over a four year period that occurred after the initial contract award date to Trillion, and never went to any individual with decision making authority. Trillion will invest approximately $111,874 in additional capital in order to complete this broadband expansion in rural Texas.

In summary, Trillion's actions were in full compliance with state and local procurement guidelines in effect at the time. The currently proposed FCC rule on gifts and gratuities has not been approved and is not proposed to apply retroactively to the time period in question. The amounts of the routine business meals and expenses were trivial and were never given to decision makers. Therefore, this customer's actions did not, in any way whatsoever, improperly affect the competitive bidding process.

Trillion respectfully requests that this application not be denied based on this issue.

- The documentation also indicates that Jeff Threadgill and Don Metzler (Callisburg) engaged in meetings, e-mail discussions, and verbal discussions with Trillion employees beginning in January 2008 through the award of the six-year contract to Trillion in December 2008. Based on the documentation provided to USAC, these discussions do not appear to be general marketing discussions, but rather show that Callisburg provided Trillion with inside information regarding its needs and details about their procurement process, that Trillion influenced the procurement

process by providing input into Callisburg's Request for Proposal (RFP) and FCC Form 470 to ensure that Trillion would be awarded the contract.

This letter raises many concerns. The reviewer is basing this pending denial on several inaccuracies. First and foremost, Callisburg ISD never issued an RFP. Under USAC guidelines, a school district is not required to use an RFP unless state law requires it. The state of Texas does not require a school district to issue an RFP.

Also, in regards to the Form 470 (Application No. 703210000685117), the following is listed under this 470:

**What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, 10 and/or 11 below), and answer the questions in each category you select.**

**8 ☑ Telecommunications Services**

***Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.***

a ○ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ○ **NO** , I have not released and do not intend to release an RFP for these services.

**Whether you check YES or NO,** you must list below the Telecommunications Services you seek. Specify each **service or function** (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

| | | |
|---|---|---|
| c ○ **Check this box if you prefer discounts on your bill.** | ○ **Check this box if you prefer reimbursement after paying your bill in full.** | ○ **Check this box if you do not have a preference.** |

| Service or Function: | Quantity and/or Capacity: |
|---|---|
| Local & Long Distance Phone Service (Possibly including circuits to provide dial tone) | Approx 26 lines |
| VOIP phone service for above | Applicant is considering going to VOIP phone service for same quantity as above |
| Cell Phone Service including data services | Approx 10 lines, 6 with data service |
| WAN Connectivity | Approx 4 sites, currently at 15 Mb, applicant is considering moving to 50 Mb |
| Circuits | Minimum T1 Circuit, applicant is considering adding 2 more T1 circuits |

As can be seen, the RFP box is not checked showing that no RFP was issued. There are five services being requested by the applicant. Trillion offers only three of these services; Wan connectivity, VOIP Phone service, and Circuits. This Form 470 is clearly open to a high degree of competition. For example, "*WAN connectivity: Approx 4 sites, …, applicant is considering moving to 50Mb*", is a description which is open to a wide range of bidders. There is nothing in this language that provides Trillion a competitive

advantage.

The following signature block is on the referenced 470:

**27.** Signature of authorized person: ☑

**28.** Date (mm/dd/yyyy): **09/19/2008**

**29.** Printed name of authorized person: **Chris Webber**

**30.** Title or position of authorized person: **Consultant**

**31a.** Address of authorized person: **P.O. Box 701713**
City: **Tulsa** State: **OK** Zip: **74170-1713**

**31b.** Telephone number of authorized person: **(918) 445 - 0048**

**31c.** Fax number of authorized person: **(918) 4450049**

**31d.** E-mail address number of authorized person: **info@crwconsulting.com**

**31e.** Name of authorized person's employer: **CRW Consulting, LLC**

This Form 470 was signed by CRW Consulting, LLC. Trillion is unaware of any communication between Trillion and CRW Consulting in regards to this 470.

The facts are as follows:

- The Form 470 was drafted by CRW Consulting who Trillion had no contact with regarding this 470.
- The Form 470 was open to many bidders
- There was no RFP

With this set of facts, Trillion is unsure how the reviewer could come to the conclusion that *"Trillion influenced the procurement process by providing input into Callisburg's Request for Proposal (RFP) and FCC Form 470 to ensure that Trillion would be awarded the contract."*

Specifically, in addition to the dinner and lunch meetings discussed above, on July 29, 2008, Jeff Threadgill sent Chuck Browning an email requesting information about Trillion's proposal to add T1s. On August 5, 2008, Andy Pilarcik (Trillion) scheduled a meeting with Jeff Threadgill on August 13, 2008. This email also referenced a lunch that was previously shared between Pilarcik and Threadgill.

Regarding the meal expense referenced above, this expense was allowable under state and local guidelines. The expense was included in the data submitted previously by Trillion and occurred on May 2, 2008.

On August 6, 2008, Chuck Browning sent Jeff Threadgill a "Pre-Design and Good Faith Estimate for Callisburg." This is a very detailed WAN system upgrade proposal for the school district and also contained the price list for Trillion's services.

As can be seen by the attached preliminary design and Good Faith Estimate, the following language was included:

> *"It is our understanding that your district is not seeking a formal proposal and that you are requesting this information purely as a tool to assist you with your budget planning efforts. We expect that your district is seeking similar information from other service providers as well. Since this is only a preliminary design and estimated pricing, the enclosed documentation is not a binding offer, is not a detailed, formal proposal, and is not a response to any request for proposals. It is our policy to wait to provide our formal, detailed proposal to governmental entities such as school districts until the appropriate time in the competitive bidding process.*
>
> *We would be happy to provide you with a formal Trillion proposal and Services Agreement once your district has commenced its competitive bidding process."*

It's very clear based upon this language that this information was not being provided as a proposal and Trillion prohibited its use as such. This is information on Trillion's product offering. Please see the attached letter dated June 17, 2010 from Trillion to Scott Barash. Under USAC guidelines, a service provider is able to share with a school district its product offering information which includes budgetary estimates. The industry standard practice is to provide this type of information in the form of sample pricing sheets or tariffs and is normally accompanied with the network connectivity information.

On August 13, 2008, Jeff Threadgill, David Jolly (Trillion) and Andy Pilarcik (Trillion) met to discuss Trillion's proposal for the WAN upgrade for Callisburg.

It is allowable under USAC guidelines for a service provider to meet with a school district and discuss that service provider's product offering.

On September 9, 2008, Chuck Browning scheduled a meeting with Jeff Threadgill on September 16, 2008 to "catch up with you [on] how things are going."

The actual e-mail provided is as follows:

*From: Chuck Browning*
*Sent: Tuesday, September 09, 2008 1:24 PM*
*To: 'Jeff Threadgill'*
*Subject: Callisburg ISD Visit*
*Jeff,*
*I hope all is well with you and Callisburg ISD. I wanted to see if you would be available next Tuesday afternoon around 3:00pm. I will be in your area and would like to catch up with you how things are going. Please let me know if this will work for you.*
*Thanking you in advance.*
*Chuck*

As previously discussed, Callisburg ISD is a school district where Trillion has had a contract in place since 2005 and has been providing service since November of 2005. Under USAC guidelines, it is allowable for an incumbent to check in on their customer to see how things are going. It is just good business sense for a service provider to make sure that their customers are happy with the service.

On September 19, 2008, Callisburg posted its From 470.

As previously described, the Form 470 that was posted was done so by an E-Rate consultant who Trillion had no communication with in regards to this 470 and the Form 470 was requesting a variety of services including services which Trillion did not offer.

Subsequent to the filing of the Form 470, Trillion and Callisburg continued to meet and discuss items related to the bid. On October 16, 2008, Jeff Threadgill requested whether an additional T1 line could be added for the district. Chuck Browning responded and stated that he would provide a full proposal by tomorrow and would call Jeff that afternoon.

Trillion had been providing service to Callisburg ISD since November of 2005. The service included internet access. Trillion and Callisburg ISD signed an addendum to the original contract awarded on 1/12/05 associated with Form 470 #155430000506476, adding a single T1 for internet access. The addition of a single T1 was allowable under the contract that was signed back in 2005 between Trillion and Callisburg ISD and did not require a new Form 470.

On November 6, 2008, Jeff Threadgill forwarded Chuck Browning information about the number of phones needed about Callisburg's LAN switches and questioned whether they were VoIP capable.

The Form 470 (Application No. 703210000685117) had been posted on September 19, 2008. The corresponding e-mail is as follows:

*"From: Jeff Threadgill [jthreadgill@cisdtx.net]*
*Sent: Thursday, November 06, 2008 2:08 PM*
*To: Chuck Browning*
*Subject: FW: Phone Numbers*

*Hello Chuck,*
*I am forwarding you the numbers Don gave me for the type of phones. If anything is confusing please let me know. He*
*sent a subsequent email to add one IP 230 to the high school campus.*
*Concerning our LAN switches, I have an HP Procurve 4108gl and the majority of other switches are HP Procurve 2600*
*series. Please let me know if these are VoIP capable.*
*Thanks,*
*Jeff Threadgill*
*Director of Technology*
*Callisburg ISD*
*940-727-9356*

*_____*
*From: Don Metzler*
*Sent: Thursday, November 06, 2008 12:31 PM*
*To: Jeff Threadgill*
*Subject: Phone Numbers*
*Elementary Campus (Both buildings)*
*We need:*
*57 IP 115*
*17 IP 230*
*2 IP 560*
*42*
*1 IP 8000*
*We will only need to add 3 more IP 115s in the future.*
*Secondary Campus (Including Ag. Science building and Old Gym)*
*We need:*
*50 IP 115*
*13 IP 230*
*2 IP 560*
*1 IP 8000*
*We will need to add 15 more IP 115s in the future and 4 more IP 230s.*
*Administration Building*
*We need:*
*2 IP 560*
*3 IP 230*
*Field House and Band Hall*
*We need:*
*2 IP 230*
*3 IP 115*
*Transportation Department Building*
*We need: 2 IP 230"*

As can be seen by this e-mail communication, there are a couple of things to note. First is that this e-mail communication occurred on November 6, 2008. This is a full three weeks after the Form 470 had been posted. Under USAC rules, potential bidders are allowed to ask clarifying questions of the applicant. Second, there was no RFP and only

limited technical detail was provided on their Form 470 (see above for Form 470 image), it would have been necessary for any vendor to ask clarifying technical questions in order to provide a bid response. Third, please note that any discussion related to handsets is for non E-Rate equipment. Lastly, it is also obvious by this e-mail exchange, that Trillion could not have aided the applicant in creating the applicant's set of requirements for this Form 470. If Trillion had, this information would not have been needed three weeks after the Form 470 had been posted.

On November 19, 2008, Chuck Browning forwarded Don Metzler (Callisburg) an amendment to the Trillion contract in order to add an extra T1 line.

As described above, this was an amendment to an existing contract and previous Form 470. Therefore, there should be no concern in regards to this item.

On December 1, 2008, David Jolly (Trillion) sent Don Metzler a "Trillions Mini prop to Callisburg" and noted that Chuck or he would be in touch tomorrow or on Wednesday to review. On December 5, 2008, Chuck Browning scheduled a conference call with Don Metzler to discuss Trillion's proposals on December 9, 2008 at 11 am.

Under USAC guidelines, service providers are allowed to submit a bid in response to an applicant's Form 470, which is all this email is referring to. A service provider is also allowed to discuss and clarify that same proposal.

On this same day, December 5, 2008, Don Metzler sent Chuck Browning (Trillion) and CRW Consulting an email that stated: "I want us to be on the same page with regards to site locations listed on 470 forms, contracts, etc. The four site locations should be . . . I hope this help us avoid possible problems with the SLD in the future." On December 8, 2009, Chris Webber (CRW Consulting) confirmed with Don Metzler and Chuck Browning that these four entities will appear in block 4 of the application.

There are a couple of items to discuss under this. The first item is that Trillion submitted a proposal nearly 3 months after the Form 470 was posted. It should be noted that in order to properly prepare a bid for a fiber based network, an onsite engineering team would need to walk the potential routes associated with this network build. Trillion would then take this data, gather outside vendor, third party contractors, permitting, designing, and other information. Only then would Trillion be able to develop a final design which could be used to prepare a proposal. While a vendor could develop a preliminary design, a proposal with the necessary details would likely take a few weeks, as is this case with Trillion. Trillion submitted its bid on December 1st, nearly 3 months after the Form 470 was filed. This information indicates that Trillion did not have information prior to the Form 470 being submitted in order to develop a proposal.

It also appears, based on the email communications highlighted above by USAC

regarding the Block 4 information, that the school district had selected Trillion for this award. This type of communication would be typical prior to any Form 471 filing. Keep in mind that the Form 470 (Application No. 703210000685117) had been posted on September 19, 2008. The allowable contract date based upon this Form 470 was October 17, 2008. The contract was signed on December 19, 2008 and they subsequently filed their Form 471. This communication is taking place nearly two months after the allowable contract date and is completely in compliance with USAC guidelines.

And, finally, Callisburg ISD had received a Block 4 partial denial in 2007. This e-mail simply is to ensure that the proper filings from their E-Rate consultant and any associated paperwork, including contracts from Trillion, would be correct so that a Block 4 denial would not happen again.

On December 9, 2008, Callisburg and Trillion had a conference call to discuss Trillion's proposals. Also on December 9, 2008, Chuck Browning sent Don Metzler an email noting how much Trillion values its relationship with Callisburg and that the paperwork that was discussed during the call that day was also attached for his review. The contract was awarded to Trillion on December 19, 2008. (*See* Callisburg.CB. attachment.)

The Form 470 (Application No. 703210000685117) had been posted on September 19, 2008. The allowable contract date based upon this Form 470 was October 17, 2008. The contract was awarded to Trillion 3 months after the Form 470 filing. USAC guidelines allow service providers to discuss their proposals and contracts with applicants.

FCC rules require applicants to conduct a fair and open competitive bidding process free from conflicts of interest. *See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, Order, 19 FCC Rcd 6858, ¶ 60 (2003) (*"Ysleta Order"*); *See also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028-4032-33, ¶ 10 (2000); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 07-1270 (2007); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-449 (2008)(Caldwell Parish). Applicants cannot reveal to one prospective service provider information they do not provide to all. *See* Caldwell Parish, ¶ 16. For additional guidance regarding the competitive bidding process, please refer to the USAC

website at: http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

If the entire FRNs should not be denied and you have alternative information, please provide the supporting documentation. We are including copies of the above referenced emails and meeting confirmations for your review.

Additionally, please answer the following questions so that we may complete our review.

You have indicated in your response, "The district staff did not receive and is not aware of any meal, entertainment, or trip offered or provided by Trillion officers/employees." However, Trillion Partners, Inc. has provided documentation showing that on February 10, 2005, Karla Burkholder (Callisburg) attended a dinner hosted by Trillion during the Texas Computer Education Association trade show at Carmelo's Italian Restaurant in Austin, Texas. The total cost of this dinner was $384.02 ($64.00/person). Trillion also provided documentation regarding a breakfast on October 14, 2005 that was attended by Karla Burkholder (Callisburg) for $26.41 ($13.20/person). Trillion provided documentation for lunch on October 22, 2007 with Jeff Threadgill for $27.78 ($9.26/person). Also Trillion provided receipts for the meals discussed above that Jeff Threadgill attended on February 5, 2008 and May 2, 2008. Please explain the discrepancy in your response and the documentation Trillion has provided. (*See* Callisburg.Meals document.)

During our review of Trillion and your documentation, it appears that Andy Pilarcik (Trillion) invited Jeff Threadgill (Callisburg) to attend Trillion's VETC conference on June 24-25, 2008 in Austin, Texas. Please confirm whether Jeff Threadgill attended this event and if so, please indicate who paid for the trip expenses and provide documentation regarding this trip. Please also confirm whether any other Callisburg employee was offered or attended one of Trillion's VETC conferences and provide any related documentation. (*See* attached Callisburg.VETC.Emails attachment).

No Callisburg employees attended VTEC. In the expense data provided by Trillion, one of the expense categories was mis-labeled. While the expense category for $32.32 included a reference to VTEC, that reference was provided in error. This meal was not associated with VTEC.

You have 15 days to respond to this request. Your response is due by the close of business June 30, 2010. Please reply via e-mail or fax. Please provide complete responses and documentation to the questions listed above. It is important that you provide complete responses to ensure the timely review of your applications. If you do not respond, or provide incomplete responses, your funding request(s) (FRNs) may be reduced or denied, or in the case of committed FRNs subjected to commitment adjustment and we will perform the denials described at the beginning of this letter.

If the applicant's authorized representative completed the information in this document, please attach a copy of the letter of agency or consulting agreement between the applicant and the consultant authorizing them to act on the school or library's behalf. If you receive assistance outside of your organization in responding to this request, please indicate this in your reply.

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s). Include in any cancellation request the Form 471 application number(s) and/or funding request number(s). The cancellation request should be signed and dated and including both the name and title of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Pina Portanova
USAC, Schools and Libraries Division
Phone: 973-581-5016
Fax: 973-599-6515
E-mail: pportan@sl.universalservice.org

Sincerely,

**Trillion Partners, Inc.**

Attachments:

- Trillion Account Summary and Review June 8, 2009 – Callisburg Independent School District of Education
- Letter to Mr. Scott Barash dated June 8, 2010
- Letter to Mr. Scott Barash dated June 17, 2010
- Preliminary Design and Good Faith Estimate

cc: Catriona Ayer, USAC
Irene Flannery, FCC

# Trillion Account Summary and Review

## Customer Information

| | |
|---|---|
| **Name** | CALLISBURG INDEP SCHOOL DISTRICT |
| **Address** | 148 Dozier St., Gainesville, TX, 76240 |
| **Billed Entity # (BEN)** | 140927 |
| **Lead Sales Representative** | Randy Wright, Andy Pilarcik, Chuck Browning |
| **Customer of: (Direct Sales Communications)** | Gary Gaessler No; Roger Clague No; Steve Davis No |
| **Trillion/E-Rate Consultant Communication** | Email communication with Chris Webber of CRW Consulting, LLC related to typical SLD filings requirements. |
| **Customer Status** | Active customer |

## Contract Information

| ContractNumber | Award Date | End Date | 470 Number | 470 Date | FRN Number | 471 Number |
|---|---|---|---|---|---|---|
| 49905 | 11/29/04 | 06/30/10 | 155430000506476 | 11/01/04 | 1522033 | 551567 |
| 49905 | 01/12/05 | 06/30/10 | 155430000506476 | 11/01/04 | 1230744 | 446653 |
| 49905 | 01/12/05 | 06/30/10 | 155430000506476 | 11/01/04 | 1460815 | 529571 |
| N/A | 01/12/05 | 06/30/10 | 155430000506476 | 11/01/04 | 1651788 | 598748 |

## Extensions/Renewals/Upgrades

| ContractNumber | Award Date | End Date | 470 Number | 470 Date | FRN Number | 471 Number |
|---|---|---|---|---|---|---|
| N/A | 12/19/08 | 06/30/14 | 703210000685117 | 09/19/08 | 1810189 | 662878 |
| N/A | 12/19/08 | 06/30/14 | 703210000685117 | 09/19/08 | 1810198 | 662878 |
| N/A | 12/19/08 | 06/30/14 | 703210000685117 | 09/19/08 | 1810192 | 662878 |

## Expense Summary

| | |
|---|---|
| **Governing State** | Texas |
| **Business Meals** | In compliance with state guidelines |
| **Gifts & Entertainment** | None |

## Customer Communications

| | | | | |
|---|---|---|---|---|
| **Communications Provided** | **Begin Date** | 1/18/2005 | **End Date** | 12/19/2008 |
| **Customer Communications Summary** | Typical customer communications | | | |

June 8th, 2010

Mr. Scott Barash
Chief Executive Officer
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Dear Scott,

On behalf of the Board, investors and management team of Trillion, I want to send a sincere thanks for applying additional resources to Trillion's applicants. Yet, as communicated via emails and phone calls from Ron Reich of Intel, Trillion Partners has reached a point of insolvency and imminent bankruptcy given an extended lack of funding under the E-Rate program. As referenced in the letters to the E-Rate Executive Director last January, and last month to Chairman Genachowski, Trillion has undergone enormous strain and on-going financial damanges due to multi-year delays in processing in excess of $17M in applications. USAC committed to process a minimum of 50 applications by yesterday, the 7th of June. Trillion is now aware of disposition on some of the 50 promised applications, which in some cases stretch back to 2006.

Trillion is now aware that USAC recently sent letters to at least 13 Trillion customers over the last few days, indicating intention to deny their applications. This letter details the overarching policy context and cites reasons in specific cases as to why applications in this group of 13 have been incorrectly processed after very lengthy delays. This letter is a final appeal to hopefully prevent an avoidable and catastrophic series of service disruptions. We strongly believe that a “fair and open competitive process” was not impaired by a conflict of interest, and that the regulations and rules have been misapplied and the facts misinterpreted in each of these applications. We urge that USAC immediately reconsider these specific applications and approve them for funding. If these actions are not corrected immediately, the company does not expect to have funds on Monday June 14th to make its payroll obligation and to make payment on long overdue obligations to circuit suppliers. We expect the to be forced to close its doors and to discontinue service to over 600,000 students and 22,000 school administrators. The market will be left with one less competent service provider in direct conflict with the FCC’s goal of promoting a competitive environment to deliver the best broadband services to schools at the lowest cost.

Trillion has endeavored, based upon years of USAC guidance and training, to make sure that its approach is consistent with state, local and FCC procurement rules. Trillion believes that the data provided by Trillion to USAC supports this. However, it appears that USAC is basing potential denials on rules that have never been formally adopted or interpretations of data that are not consistent with the facts as provided in the documentation by the company. We are alarmed that USAC is applying potential rules retroactively to applications as far back as 2004. The results of these practices are seemingly to single out Trillion in a manner that if applied universally across all service providers would result in denial of the majority of all applications put forth for E-Rate funding to USAC.

Based upon the 13 letters received thus far, the following are policies are that have been incorrectly applied.

- Gifts and other expenses that are allowable
- Consortium member approval prior to bid
- 470 related communications by a vendor
- Communications allowable by an incumbent vendor with its customer

Below we provide factual evidence that clears any suspicion of conflicts of interest or other issues that may have prevented a fair and open competitive process on the example application under review. We believe that for each and every of the 13 applications in question, that the facts support the same strict and clear compliance with all rules communicated by USAC. Each of these applications must be swiftly approved so that further misapplication of rules and unjust financial damage to company can stop immediately. For example, Trillion was recently provided a letter from USAC dated June 3, 2010 to a Trillion customer, Houston County Board of Education, that threatens denial of their E-Rate application. In this letter, the applicant, Houston County Board of Education, is told that its application for E-Rate funding will be denied in full due to a $26 meal provided by the school district's incumbent service provider, Trillion. The letter solely points to this meal as reason for impending denial.

> *"Based on the documentation that you or Trillion Partners, Inc. have provided, the entire amount of FRNs 1786841, 1786824, and 1809620 will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you or Trillion provided indicates that you were offered and accepted valuable gifts, in the form of a meal, immediately prior to the process you conducted to select a service to provide these goods and services from the service provider you selected. This gift show that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.*
>
> *The gift was in the form of a meal at Pig Out BBQ 1 on January 6, 2009 in the amount of $26.34."*

This letter raises many concerns. The reviewer is basing this pending denial on several inaccuracies. As an example, FRN's 1786841 and 1786824 are continuation requests of a contract that was signed in January of 2008, a full twelve months before this meal was provided. The school district has been a customer of Trillion's since 2006, when Trillion acquired the contract from another company. How could a $26.34 meal to a non-decision maker influence a Superintendent and the Board of Houston County to make a decision to award a contract for $348,804 over a three year term, when the contract award occurred a full year prior to the meal?

USAC also seems to be ignoring its own guidance regarding its policy on meal expenses. In a letter from USAC to Trillion dated April 8, 2009, where USAC expresses its concern about meals and other gifts, USAC states that the applicant must comply with "all applicable state

and local procurement laws". We have done that in this instance, as well as all others. We are happy to provide any details on specific state laws if necessary. None of USAC's training materials adequately address these issues, but we have followed any and all guidelines made available.

Trillion is also aware that in the Notice of Proposed Rulemaking dated May 20, 2010, a new rule is being proposed:

> *"Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant"*

This proposed rule is based upon 47 C.F.R. §§ 1.3001, 1.3002, which governs the "Acceptance of Unconditional Gifts, Donations and Bequests" currently in place for Executive Branch Employees, not state or local employees. Trillion fully supports the proposed rulemaking. In February of 2009 and 15 months prior to the NOPR, Trillion instituted a "Trillion Code of Conduct" that prohibits Trillion employees from providing gifts of any form to any governmental employee. We believe that all vendors should be held to the same standard to which Trillion has been holding its employees for over a year. However, it is neither legal nor fair to apply this proposed rule to applicants retroactively.

It is our experience that the occasional provision of meals and entertainment is the industry standard practice engaged in by the majority of service providers. Ex post facto application of new rules to Trillion would raise questions re the legitimacy of many other service providers.

In addition to our concern that the law is being misapplied to Trillion, we have learned that a USAC employee told a Trillion customer that it would be better served by canceling the school district's funding request for Trillion services. An excerpt from this letter Trillion had received cancelling our contract to provide services is as follows:

> *"In conversations with USAC, we have been informed that these funding requests will be expedited if the request for E-Rate funding for Trillion services is cancelled."*

This letter raises serious concerns about the fairness of the USAC review.

Consistent with USAC's corporate charter to "ensure that schools and libraries have access to affordable telecommunications and information services," this situation needs immediate correction. E-Rate funding for prior years should not be denied to applicants on the basis of retroactive application of proposed rules, misapplication of the facts or unduly burdensome audit practices. We are confident that a rigorous evaluation of the law and the facts will vindicate Trillion. However, time is of the essence. Unless these clear errors are not expeditiously corrected, we expect imminent loss of control of our company and the systems serving 600,000 students and 22,000 administrators and teachers in primarily rural and underserved areas will go dark.

Sincerely,

Trillion Partners, Inc.

June 17, 2010

Mr. Scott Barash
Chief Executive Officer
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Dear Scott,

Thank you very much for the time you and your staff spent with us on the phone last Wednesday. Also, thank you as well for the resources you have allocated to complete the processing of the E-Rate applications for Trillion's customers. Although it appears progress has been made, as we discussed on the phone, USAC appears to have misapplied its own rules and misconstrued or ignored relevant factual information in connection with a large number of these applications. Trillion is on the verge of insolvency and time is of the essence, and therefore we are asking you to reconsider these applications.

Of the 50 applications that USAC reviewed on or prior to June 7, 2010, a full two-thirds (33 applicants) received a letter either indicating an intent to deny or seeking clarifications and that in some form threatened denial. This represents an extraordinarily high ratio of applicants who supposedly did not follow the rules, and is starkly inconsistent with Trillion's historical application approval rate and the results of USAC's comprehensive review of Trillion's customers in 2006.

There appear to be several common themes underlying USAC's preliminary determinations to deny these E-Rate applications. The first theme concerns allowable gifts, gratuities and meals that can be provided to an applicant by a service provider. We discussed this issue in our phone call, where you indicated that a school district must follow state and local procurement rules to be compliant, and acknowledged that the proposed rule put forth in the NOPR dated May 20, 2010 applying a more stringent set of rules around gifts, gratuities and meals has not yet been adopted. Therefore, we believe that all of the letters sent by USAC threatening denial for meals, gifts and gratuities that were within state and local guidelines should be rescinded and the subject applications approved. To do otherwise would have the effect of contradicting USAC's published guidance and retroactively applying a not-yet-adopted new standard in a discriminatory fashion to conduct that was fully compliant at the time. Please refer to our letter of June 8, 2010 for further detail on this issue.

This letter is intended to address the other common themes underlying USAC's prospective denials that we did not have an opportunity to discuss on the phone, which relate to:

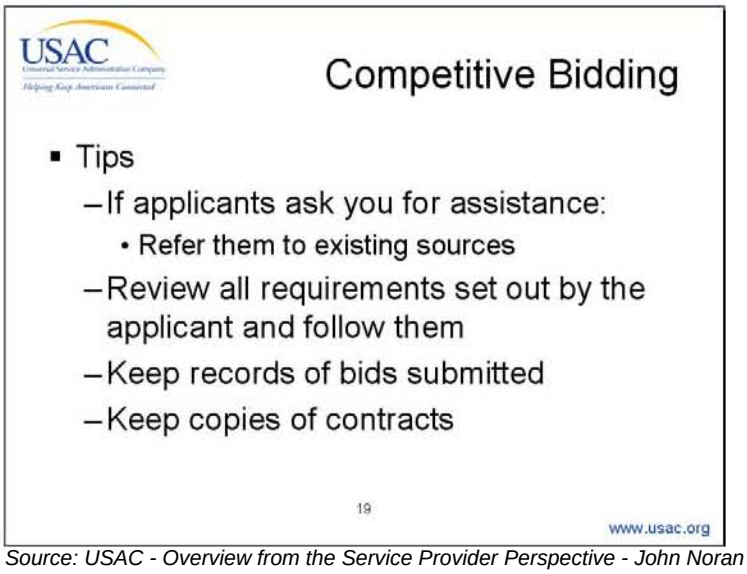
1) Allowable Form 470-related communications allowable by a vendor

2) Allowable communications prior to a Form 470 being posted
3) Allowable communications by an incumbent vendor

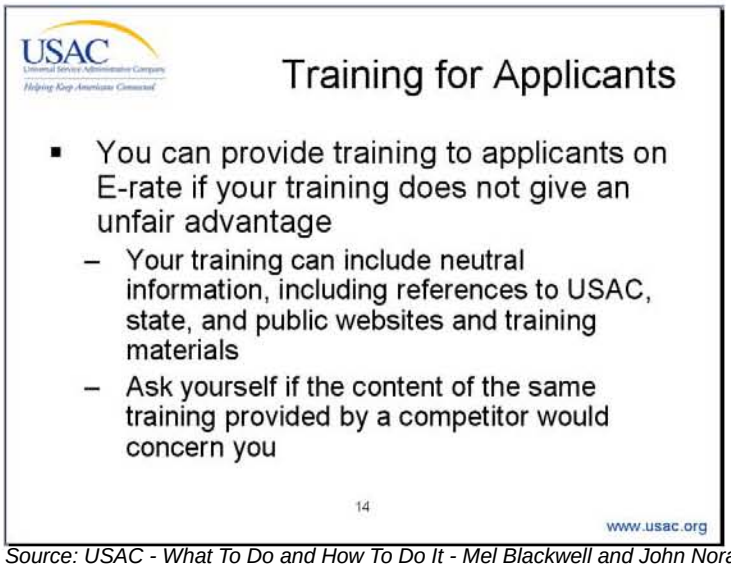
As demonstrated below, it appears that USAC has not followed its own guidance, has misapplied rules and/or has misinterpreted facts related to these types of communications in connection with these applications.

**1) Allowable Form 470-related communications**

The following excerpts from USAC training materials published between 2007 and 2010 set out clear rules governing Form 470-related communications between an applicant and a vendor:

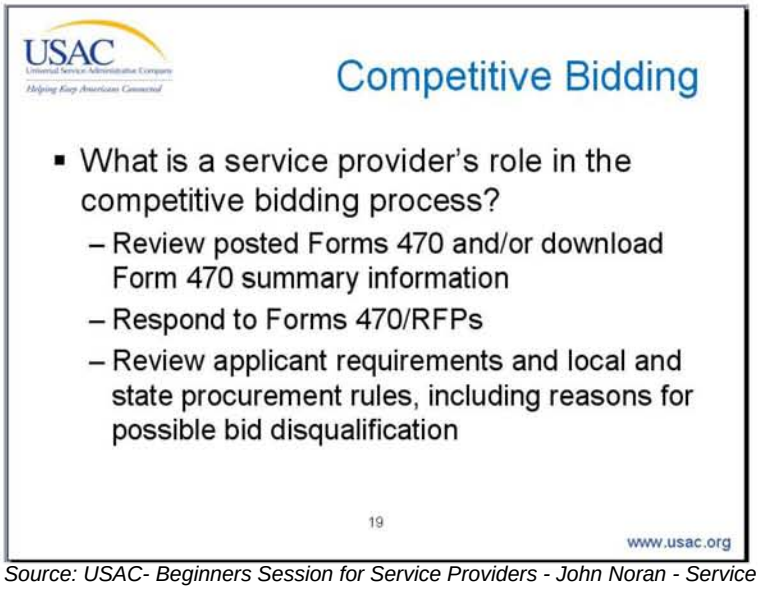



*Source: USAC - Overview from the Service Provider Perspective - John Noran - Service Provider Training Schools and Libraries Division - April 18, 2007 – Atlanta • April 25, 2007 – Chicago*




*Source: USAC - What To Do and How To Do It - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - May 8, 2008 – Miami • May 14, 2008 – Salt Lake City*

*Source: USAC - Program Compliance for Service Providers - Catriona Ayer - Schools and Libraries Division - May 4, 2010 – Los Angeles • May 11, 2010 – Tampa*




*Source: USAC- Beginners Session for Service Providers - John Noran - Service Provider Training Schools and Libraries Division - May 4, 2010 – Los Angeles • May 11, 2010 – Tampa*

*Source: USAC - Application Process - Schools and Libraries Division - Washington, DC • Seattle • Denver • Chicago • Newark • Los Angeles • Atlanta September/October 2008*

To summarize this guidance, a service provider may not assist an applicant in the completion of a Form 470 or offer or provide vendor-specific language for a Form 470. A service provider may offer E-Rate education if the training is neutral in nature and does not provide an unfair advantage to the service provider. If asked for assistance by the applicant in completing a Form 470, the vendor should refer the applicant to existing resources. Once the Form 470 is filed, vendors are allowed to review the form, evaluate its requirements and ask clarifying questions so long as the answers provided by the applicant are available to all potential bidders.

As described in detail in our prior letters to Mel Blackwell of USAC dated April 17, 2009 and June 8, 2009, Trillion employees have been trained extensively regarding these requirements. Trillion has a long-standing policy requiring its employees to direct all E-Rate questions from an applicant to the company's internal E-Rate attorney or E-Rate specialist, who in turn have procedures in place to direct applicants directly to the USAC website for assistance.

Despite its published guidance, it appears that USAC has taken the position that virtually any communication between a vendor and applicant regarding a Form 470 is a basis for denial. An example of this is the letter received from USAC by St. Louis County Library dated June 2, 2010, which alleges that Trillion provided improper assistance to the applicant.

St. Louis County Library posted its Form 470 on August 29, 2008. The first communication between Trillion and the applicant, which occurred after the posting on or about September 8, 2008, is as follows:

*"Dear Mr. Fejedelem ,*
*>*

*> I am contacting you to request a copy of the RFP referenced on the 470*
*> Application # 738980000679314 recently filed by St Louis County Library.*
*>*
*> Can you please forward me a copy of the RFP?*
*>*
*> Trillion is the leading provider of Broadband WAN and Voice over IP*
*> services for K-12 education.*
*>*
*> In addition to WAN services, Trillion offers a VoIP service that is*
*> Priority 1 E-Rate eligible and is enabling K-12's to enhance safety*
*> and communication in their schools with no install costs, money down,*
*> equipment purchases or maintenance fees.*
*>*
*> After reviewing the RFP, I would appreciate the opportunity to speak*
*> with you for a few minutes by phone to better understand the Broadband*
*> and IP Telephony needs for the your school district.*
*>*
*> Thank you very much,*
*>*
*> ** Jeanne Massey ***
*>*
*> * Trillion Partners, Inc. **
*>*

In support of its preliminary determination, USAC cites the following e-mail exchange:

"**9/24/2008 1:45PM**

*Jake,*

*Just a couple of questions…*

1) *You have a total of 325 phones. Does the distriubution matter, or do you want them to spread evenly across the 20 sites? Same question for the 25 extra voice mail boxes.*
2) *Are you going to want/need to keep all of the other ports (fax lines, data, TDD, etc) that are listed in the RFP?*
3) *Any idea what types of phones and in what quantities you will want at each site (basic users, mid-level admins, high-end execs)?*

*I think this is all I need. Thanks.*

*John*

**9/24/2008 3:07PM**

*Jake,*

*One other thing that we just discovered… you did not check the box seeking a multi-year contract (7b) on your 470. Was that intentional or an oversight?*

*John Masterson*

**9/25/2008 9:17AM**

*John,*

*Multi-year contract was an oversight. We would be seeking a multi-year deal.*

*Enclosed is the telephone breakdown list (the number of jacks we have at each location).*

*Most sites will have basic user phones (cordless if possible). For high level execs, call forwarding to cell device is of far more importance than the type of desk phone.*

*-Jake*

**10/2/2008 3:04PM**

*Jake,*

*Would you please call me at your earliest convenience 913-269-7174. I want to make sure we're on the same page regarding your new 470. Thanks!*

*John"*

As USAC indicates, the only difference (other than the due date) between the original Form 470 and the new Form 470 posted on October 13, 2008 was that the multi-year box was checked.

The salient facts related to this application, as demonstrated by the communications set forth above, are as follows:

- Trillion was not in contact with this prospect prior to the posting of its original Form 470
- Trillion asked for the RFP via e-mail after the original Form 470 was posted.
- Trillion asked clarifying questions in order to better understand the service requirements (such as phone count by site) and asked whether the applicant was actually seeking a one-year term
- The applicant discovered its mistake and corrected the error by filing a new Form 470
- The RFP requirements and services requested were unchanged in the new Form 470
- Trillion had no agreement or understanding with the applicant of any kind

With this set of facts, Trillion is unsure as to how the USAC reviewer came to the following conclusion:

> "*These e-mail exchanges suggest that it was pre-determined that St. Louis County Library would enter into a new contract with Trillion prior to the Form 470 being posted and prior to the 28 day competitive bidding*

*window. It also suggests that Trillion was intimately involved in developing the specifications the library would seek on its Form 470 and perhaps was involved in the drafting of the language to be used in the Form 470."*

There is simply no basis for a conclusion that a contract was predetermined as a result of Trillion's routine communications. Trillion could not have been involved in the development of the project specifications because those specifications were in the RFP which Trillion received only after the original Form 470 was posted and those specifications did not change from original to final Form 470 posting. It is obvious that Trillion's clarifying questions led the applicant to discover an error in its original Form 470 that was subsequently corrected. These communications speak for themselves and do not support any reasonable interpretation to the contrary.

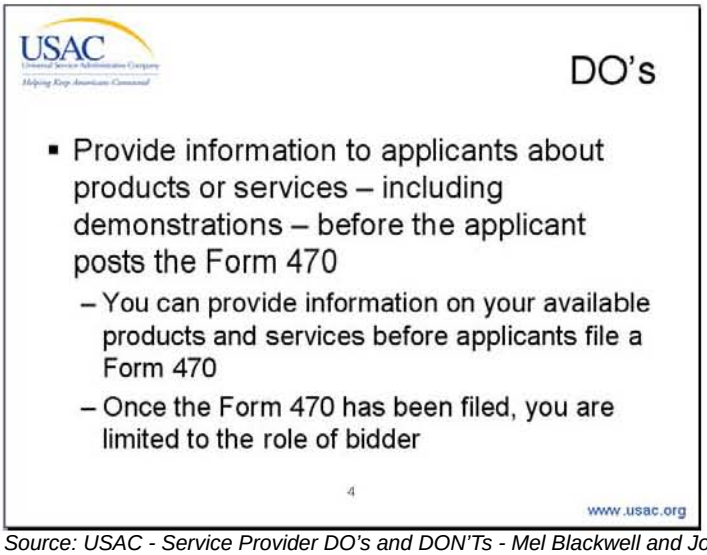
The St. Louis County letter is just an example of the flawed logic employed in a number of "intent to deny" letters based on Form 470-related communications with Trillion customers where:

- The reviewer incorrectly interpreted the proper chronology
- The decision is inconsistent with USAC rules and guidance
- The "facts" relied upon by USAC are incorrect
- The wording in the filed Form 470 uses language directly from USAC's Eligible Services List
- The services requested are clearly open to many bidders

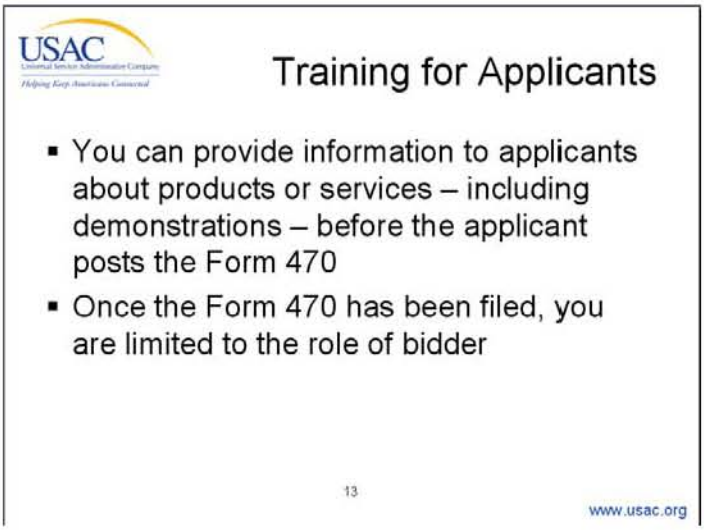
We urge USAC to revisit these applications with a view to applying a consistent and understandable standard that is consistent with its published guidance.

## 2) Allowable communications prior to Form 470 posting

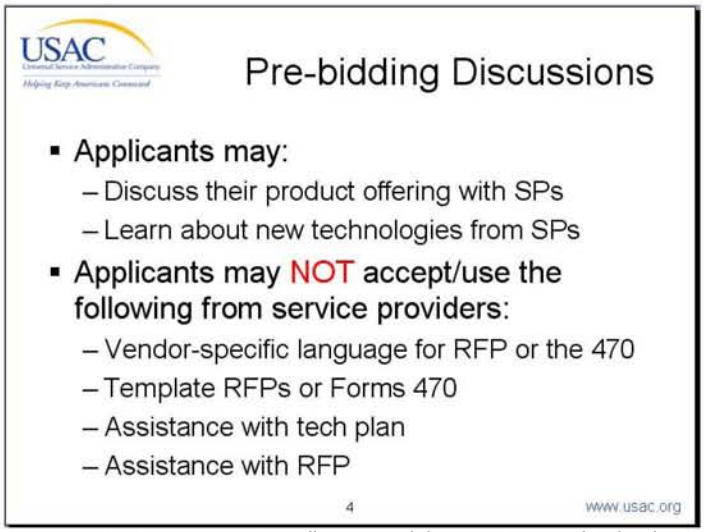
With regard to marketing, product demonstrations and similar communications with a prospective applicant prior to the posting of a Form 470, USAC has offered the following guidance:



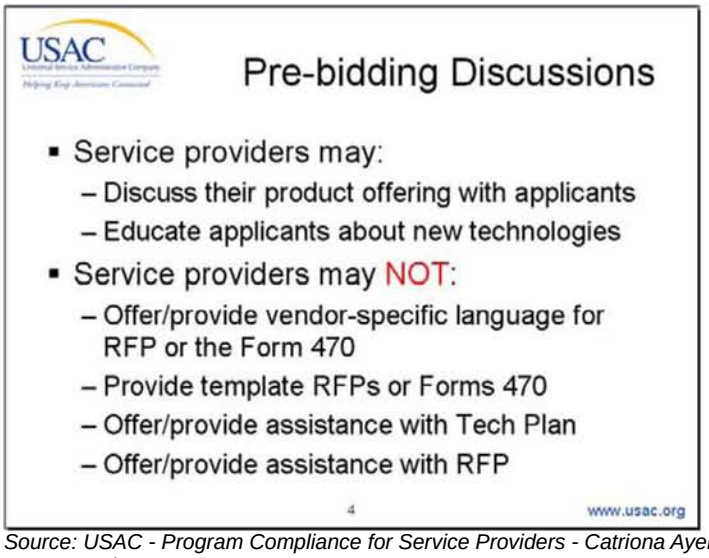

*Source: USAC - Service Provider DO's and DON'Ts - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - April 18, 2007 – Atlanta • April 25, 2007 – Chicago*




*Source: USAC - What To Do and How To Do It - Mel Blackwell and John Noran - Service Provider Training Schools and Libraries Division - May 8, 2008 – Miami • May 14, 2008 – Salt Lake City*




*Source: USAC - Program Compliance - Helping You Succeed Schools and Libraries Division - Washington, DC • Newark • Atlanta • Chicago • Orlando • Los Angeles • Portland • Houston - September/October 2009*




*Source: USAC - Program Compliance for Service Providers - Catriona Ayer - Schools and Libraries Division - May 4, 2010 – Los Angeles • May 11, 2010 – Tampa*

To summarize this guidance, prior to the posting of a Form 470, a vendor is allowed to provide general information regarding the vendor's products and services, discuss and answer questions regarding its product offering[1], and provide product demonstrations[2], including an illustration or visual representation

[1] American Marketing Association definition: *A bundle of attributes (features, functions, benefits, and uses) capable of exchange or use; usually a mix of tangible and intangible forms. The terms and conditions (price, quantity, delivery date, shipping costs, guarantee, etc.) under which a product or service is presented to potential customers*

*Blue Mine Group definition: Product Offering has 5 key elements which include the product definition, customer experience, product pricing, collaboration, and differentiation.*
*http://www.blueminegroup.com/articles/1_winning_product_offering_020810.php*

[2] American Marketing Association definition: *An aspect of the sales presentation that provides a sensory appeal to show how the product works and what benefits it offers to the customer*

of how a prospective applicant's network might be configured as well as generic pricing and other indicative terms.

In many instances, however, USAC has used permissible pre-Form 470 communications as the basis for potential denial of applications filed by Trillion's customers. An illustrative example is the letter to Nogales Unified School District 1 dated June 9, 2010. This letter states:

> *"Correspondence provided by you shows that there were several discussions beginning January 2006 which predate the filing of the Fund Year 2008 Form 470 used to establish a new contract with Trillion. The Form 470 used to establish this contract with Trillion was posted October 26, 2007. The correspondence that predates that Form 470 shows that discussions took place between Trillion, yourself, and other members of your entity or state entity. These discussions included, among other things, the following:*
>
> - *Meetings occurred discussing possible WAN options Trillion can offer- January and February 2006*
> - *Trillion providing a design and preliminary price estimate- February 2006 and April 2007*
> - *Discussions to follow-up on the preliminary estimate provided by Trillion –June 28, 2007*
> - *Meetings with Trillion Sales representatives- August 2007*
> - *Meetings to discuss funding - September 2007*
>
> *A copy of these email exchanges are attached for your review. These email exchanges suggest it was pre-determined NOGALES UNIFIED SCHOOL DIST 1 would enter into a new contract with Trillion prior to the Form 470 being posted and prior to the 28 competitive bidding window. It also suggests Trillion was intimately involved in developing the specifications you would seek on your Form 470."*

The reviewer fails to mention that, on January 12, 2006, Nogales School district posted a Form 470 (# 884590000574746) for the services that Trillion offers. The reviewer also fails to mention that Trillion's first contact with Nogales was after the Form 470 was posted. Therefore, Trillion had every right to act as a bidder, provide a proposal and clarify its proposal as the e-mail record suggests. It should be noted that Trillion did not win this bid.

During the one-year period from June of 2006 until the end of June 2007, Trillion met with the school district a total of five times, none of which occurred during a bid cycle. Trillion provided product offering information to a prospective customer

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*The Free Dictionary Definition: The act of showing or making evident by illustration, explanation or visual presentation showing how something works*

as well as a preliminary design and price estimate. Keep in mind that Trillion participated in a previous bid cycle that Trillion did not win and had information from this bid cycle on which to base its estimate. USAC guidance establishes that Trillion has the right to discuss its product offering with a prospective applicant, and the chronology identified by USAC merely confirms that these permissible discussions occurred.

It is standard industry practice to provide product quotations to potential customers. In the normal course of business, school districts across the country ask for budgetary information and service providers routinely respond to these requests. Sometimes a price quotation is in the form of a tariff and other times in the form of a budgetary estimate, all of which are well within the definition of "product offering information."

There is no data whatsoever indicating that a contract was "pre-determined" for Trillion. Keep in mind that the applicant's Form 470 requested *"Digital Transmission Services - Wireless or Fiber Optic based: Leased Wireless or Fiber Optic Based WAN for eleven campuses including District Office Hub".* At the time of this bid cycle, Trillion only offered Wireless WAN and did not offer Fiber WAN services. If the outcome was pre-determined for Trillion, presumably the applicant would have requested wireless WAN services only. To the contrary, publicly available data shows that there were multiple bidders for this project that included both wireless and fiber providers.

The summary of the facts are as follows:

- Trillions first communication occurs after the applicant files a Form 470, and Trillion is not selected on that bid
- Trillion met with the school district several times over an almost two year period to discuss its product offering, all of which is allowable under USAC rules
- There are no USAC rules which limit the number of times a service provider can meet with an applicant.
- No communication whatsoever over that two-year period indicates a contract is pre-determined
- Trillion does present a pre-design and budgetary estimate, which is allowable under USAC rules
- There is no communication at all between the parties regarding any Form 470 posting
- The Form 470 posting is fair and open and is inclusive of competitive services that Trillion could not provide

With this set of facts, we cannot see how the reviewer could have possibly come to the conclusion that a decision was pre-determined and that Trillion provided impermissible guidance on the applicant's Form 470. It is clear that, in this case and in other similar cases, USAC has drawn the incorrect and unwarranted

conclusion that routine contact with a potential applicant is a basis for denial in direct contravention of its own guidance.

**3) Allowable communications by an incumbent vendor**

Although this theme is very similar to the prior theme and is governed by the same set of rules, there is a fundamental difference in the relationship between an applicant and an incumbent provider in that the incumbent provider will necessarily have numerous communications with the applicant regarding the existing services provided and is the logical provider of choice when the applicant seek service additions or upgrades. As a practical matter, a new vendor will often be precluded from providing service additions upgrades due to technical problems and other inefficiencies associated with having multiple service providers on the same project. This problem arises in many scenarios, including MPLS WAN networks, large-scale layer 3 WAN networks, and interconnection VOIP expansion.

In the case of an MPLS network, if an applicant wanted to add a site or increase bandwidth to only a portion of the network, only the incumbent can offer this solution. The primary reasons are the technical limitations of an MPLS network. In an MPLS WAN, if any changes are going to occur to that network, no other alternative service provider's network will actually work with the incumbent's network. Therefore, without a wholesale change to the entire network, bandwidth upgrades to individual sites, as well as site additions to the network, can only be done by the incumbent MPLS provider. Significant issues with an alternative provider would come into play, such as the requirement for duplicative equipment and software, loss of network security and quality of service, the need to hand off traffic between providers and the requirement for "out of band" internet monitoring.

Similar issues arise with large-scale layer 3 WAN networks. If there is a network covering a large area serving multiple locations with network-wide routing, there is really no technical difference between this type of network and an MPLS network. Therefore, if an applicant were seeking bandwidth upgrades to a portion of the network, or if new sites were to be added, the only viable provider is the incumbent. For interconnected VoIP expansion, there are similar technical issues. Where an incumbent is providing phone service to the administrative offices, if an applicant seeks to add phone connections to the classrooms, it is technically impossible for another service provider to solve this integration, since having multiple providers would require management of two completely disparate systems with duplicative reporting and a loss of control between the systems. Therefore, if an applicant files a Form 470 for additional connections to have phones in every classroom, the bid is technically limited to the incumbent unless there is a wholesale change of the entire phone system.

In any of the three scenarios, due to the technical limitations and impracticalities,

the applicant must rely on the incumbent provider. Keep in mind that the incumbent provider by definition has critical knowledge that alternative providers do not. An incumbent can see the applicant's network statistics, how much bandwidth is being utilized, where the bottlenecks are, and what can be done to improve performance. If an incumbent service provider realizes that a portion of a network is running to capacity, there is every reason to inform the applicant of this fact. No guidance is provided by USAC in this case, but it would seem to be in the best interest of the applicant for the service provider to provide this useful information.

USAC fails to recognize the practical realities of the incumbent provider scenario. An illustrative example is a letter from USAC received by Northeast Texas Regional Education Telecommunications Network (NTRETN) dated June 4, 2010. In this letter, USAC indicates its intent to deny the application because NTRETN engaged in numerous discussions with Trillion employees beginning in 2004 through the award of multiple contracts. USAC claims that these discussions were not general marketing discussions, and further claims that Trillion was provided inside information with regard to the applicant's needs.

In order to put USAC's claims in context, it is important to provide some background regarding NTRETN and the services Trillion provides to it. NTRETN is a consortium of school districts located in Texas' Region 8 Education Service Center (ESC). The Region 8 ESC is one of 20 education service centers in Texas. The vision of Region 8 is "to develop a district-wide systemic culture to sustain a high-performing learning community." To achieve this vision, Region 8 delivers a variety of services, including distance learning, to each school district it serves. To provide these services, the NTRETN consortium was established to deliver a sustainable wide area network (WAN) in rural Northeast Texas to serve the schools in the Region 8 ESC area. NTRETN consists of 51 school districts in northeast Texas, including 150 campuses, with over 150,000 students. The majority of its member school districts are located in rural communities. NTRETN has an elected board of directors consisting of 12 school district superintendents and the Region 8 ESC Executive Director.

Trillion provides a customized network for NTRETN that links together school districts across a large, rural portion of Texas. The project to build the NTRETN was massive in scope because the network was required to cover over 9,000 square miles of geographic terrain. Trillion's network for NTRETN services 88 locations, 652 route miles (covering 9,000 square miles), and has three connections, or points of presence (POPs), out to the Internet.

To date, the implementation of this network has involved an investment of $5,865,597 in capital expenditures. It has required heavy construction in school yards, coordination of utility services, adherence to strict safety guidelines, management of network addressing and protocols and much more. In fact, the project was so large and complex that it had to be built in two technically distinct

phases over the course of 19 months. Given the project's scope, it required a tremendous amount of interaction and coordination among Trillion's employees and the NTRETN team.

USAC does not take into account that a project of this magnitude requires constant communication between the parties in order to be successful, which type of communication is in accordance with USAC guidelines. USAC also does not take into account the fact that it is nearly impossible from a technical standpoint for another service provider to provide bandwidth upgrades to a portion of this comprehensively routed and managed IP network without a complete replacement of the entire network.

In regards to the communication record, in the original build of NTRETN's network, not all of the NTRETN member school districts were connected to the network. The neighboring consortium, Region 10, also had not provided adequate Internet and WAN services to its member school districts. As a result, NTRETN had received inquiries from neighboring school districts regarding the technical feasibility of adding schools to the then-existing network. There is also mention in the e-mails of the need for additional bandwidth and NTRETN's interest in an assessment of the technical feasibility of adding a 3rd POP in Texarkana. NTRETN wanted to understand whether Trillion could expand the existing network to accommodate the additional school districts, including Region 10 schools, and whether this additional usage would negatively impact the existing network.

These inquiries are analogous to inquiries that a school district might make of its incumbent communications provider to assess whether a T-1 could be provided to connect to an additional site that is not served, whether additional capacity could be added to an existing MPLS circuit, or whether an additional T-1 of Internet capacity could be added to a currently-served site. Discussing the technical feasibility and impact of adding a T-1 to a site does not run afoul of a fair and open bidding process, and nor does discussing the feasibility and impact of adding an additional site to an existing network. These type of questions are commonplace in the industry and are part of a normal dialogue beween an applicant and its existing service provider. To require otherwise would be highly inefficient and counter-productive.

The relevant facts with respect to NTRETN are as follows:

- The NTRETN network is massive, covering 9,000 square miles
- The school districts served are generally very rural
- Over $5,000,000 in capital has been invested in the network
- An applicant is allowed to ask the technical feasibility of network upgrades
- The communication record shows normal discussions between an applicant and an incumbent who provides such a complex network
- There are technical limitations on the ability of another service provider to

connect to a single site or upgrade only segments of the network without complete replacement of the entire network

With this set of facts, we do not see how the reviewer can come to the conclusion that anything but normal course discussions took place between an applicant and their incumbent service provider. Denial is particularly unwarranted in cases of this type since the result would be to force the applicant to make an economically inefficient choice of an alternate provider or to forego the requested services entirely.

**Summary**

Trillion understands that setting a deadline can force hasty, premature decisions. The preliminary determinations of USAC to deny Trillion's customer applications cannot withstand even casual scrutiny as they contravene USAC's own guidance and are based on numerous factual errors. These determinations are clearly motivated by a desire to "move the pile" rather than an effort to get at the real facts and to fulfill the purposes of the E-Rate program.

Unfortunately, we are now out of time. While these errors can conceivably be remedied on appeal, our company will likely not be alive to see the end of that process. The sad part is that the ones really being hurt in this process are the students of the rural and underserved areas of this country that Trillion serves. Don't let these kids be without the technology that keeps them on the same playing field as the urban kids. We urge you to direct your staff to withdraw these ill-considered "intent to deny" letters and to make thoughtful determinations on the merits of these cases.

Sincerely,

Trillion Partners, Inc.

# Callisburg Independent School District

## Preliminary Design
## &
## Good Faith Estimate


**Trillion**

Andy Pilarcik

andy.pilarcik@trillion.net


Trillion

# Preliminary Design & Good Faith Estimate

It is our understanding that your district is not seeking a formal proposal and that you are requesting this information purely as a tool to assist you with your budget planning efforts. We expect that your district is seeking similar information from other service providers as well. Since this is only a preliminary design and estimated pricing, the enclosed documentation is not a binding offer, is not a detailed, formal proposal, and is not a response to any request for proposals. It is our policy to wait to provide our formal, detailed proposal to governmental entities such as school districts until the appropriate time in the competitive bidding process.

We would be happy to provide you with a formal Trillion proposal and Services Agreement once your district has commenced its competitive bidding process.

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# WAN - 4 Sites at 50 Mbps

# &

# Internet Access at 4.5 Mbps


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# Preliminary, Non-binding, Good Faith Estimate

## WAN - 4 Sites at 50 Mbps

**Service Summary**

| | |
|---|---|
| Service: | **Wide Area Network Services** |
| Number of Sites: | 4 |
| Contract Term in Years: | 5 |
| Estimated E-Rate Discount: | 65% |

| Wide Area Network Services for the following sites | Burstable Mbps | Transport (Wireless/Fiber/MPLS) |
|---|---|---|
| Callisburg MS/HS | **50** | **Fiber** |
| Callisburg Admin | **50** | **Fiber** |
| Callisburg Ag Building | **50** | **Wireless** |
| Rad Ware ES | **50** | **Wireless** |

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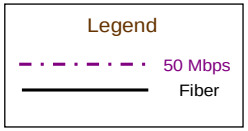
# Preliminary, Non-binding, Good Faith Estimate

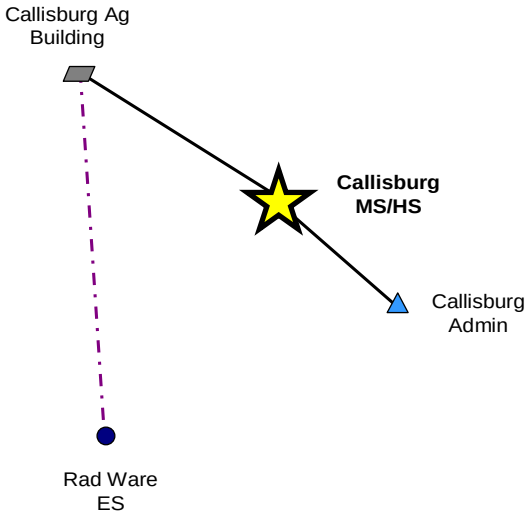
## 4 Sites at 50Mbps

Callisburg, TX

INDEPENDENT SCHOOL DISTRICT

May 28, 2008




PRELIMINARY DESIGN – This diagram is a computer generated, preliminary design based upon the information available to our design staff. This design and attendant pricing are subject to change dependent upon a full, on-site survey of facilities, restrictions imposed by local regulatory authorities, modifications to network requirements initiated by customer needs, and the availability of newer technologies.

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Network Diagram
***Not To Scale***

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# Preliminary, Non-binding, Good Faith Estimate

## Internet Access at 4.5 Mbps

**Services Summary**

| | |
|---|---|
| Service: | Internet Connectivity |
| Contracted Bandwidth | 4.5 |
| Number of Internet Circuits | 1 |

**Service Summary**

| | |
|---|---|
| Service: | **Internet Access** |
| Contract Term in Years: | 5 |
| Estimated E-Rate Discount: | 65% |
| Contracted Bandwidth | 4.5 mbps |


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# Preliminary, Non-binding, Good Faith Estimate

**Preliminary Pricing for:**

WAN 4 Sites at 50Mbps & Internet Access at 4.5 Mbps

- Per Site, Per Month including Internet: $1,900.00


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# VoIP - 4 Sites


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# Preliminary, Non-binding, Good Faith Estimate

## Voice Support for 4 Sites

| Callisburg | IP110 Black or Silver | IP115 Black or Silver | IP230 Black or Silver | IP265 Black or Silver | IP560 Black or Silver | BB 24 Black or Silver | AP100 | Power Adaptors |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| Callisburg Admin | 0 | 0 | 4 | 0 | 1 | 0 | 0 | 5 |
| Callisburg HS/MS | 0 | 35 | 7 | 0 | 3 | 0 | 0 | 45 |
| Callisburg ES | 0 | 38 | 7 | 0 | 2 | 0 | 0 | 47 |
| Callisburg AG Bldg | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Total | 0 | 73 | 19 | 0 | 6 | 0 | 0 | 98 |


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# Preliminary, Non-binding, Good Faith Estimate

## 4 Sites – 98 Handsets

| ***PHONE Quote - Purchase*** | | | **Before E-Rate** | **After E-Rate** |
|---|---|---|---|---|
| Installation Charge Per Phone | | | One Time<br>$0.00 | Not an E-Rate Eligible Purchase |
| **Total Purchase Price** | | | **$ 22,052.00** | |
| Phone Maintenance (optional) | 5 | Years | $ 7,914.35 | |
| Total (including optional Maintenance) | | | $29,966.35 | |


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# Preliminary, Non-binding, Good Faith Estimate

## 4 Sites – 138 Voice Connections

| Callisburg | Analog Phone Service | IP Phone Service | Voicemail Only | Extension Only | LEC Analog Trunk Service* | T1 / PRI Access | 911 Circuit Access (required) |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| Callisburg Admin | 1 | 5 | 0 | 2 | 5 | 0 | 1 |
| Callisburg HS/MS | 1 | 45 | 0 | 2 | 14 | 0 | 1 |
| Callisburg ES | 1 | 47 | 0 | 2 | 6 | 0 | 1 |
| Callisburg AG Bldg | 1 | 1 | 0 | 1 | 0 | 0 | 1 |
| Subtotal | 4 | 98 | 0 | 7 | 25 | 0 | 4 |
| # of End User Connections | | | | | | | 109 |
| # of Analog Trunk Connections | | | | | | | 29 |
| # of T1/PRI Trunk Connections | | | | | | | 0 |
| **Total Voice Connections:** | | | | | | | **138** |


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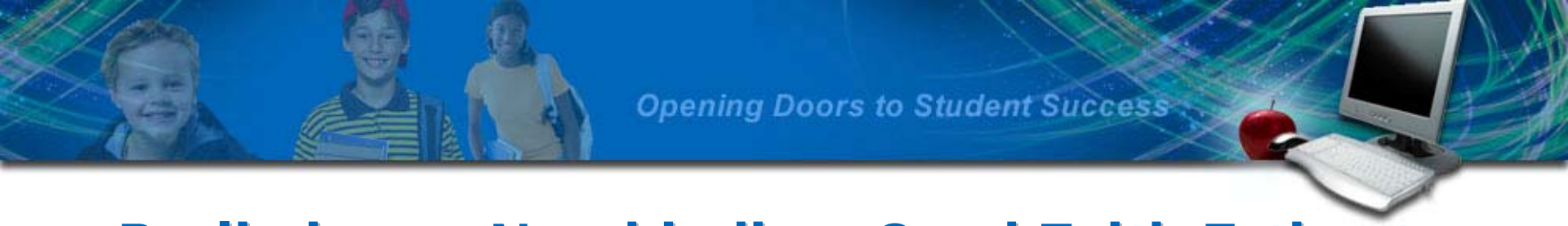


# Preliminary, Non-binding, Good Faith Estimate

## 4 Sites – 138 Voice Connections

**Service Summary**

| | |
|---|---|
| Service: | **Trillion VoIP Services** |
| Number of Sites: | 4 |
| Contract Term in Years: | 5 |
| Estimated E-Rate Discount: | 65% |
| Total Voice Connections: | 138 |


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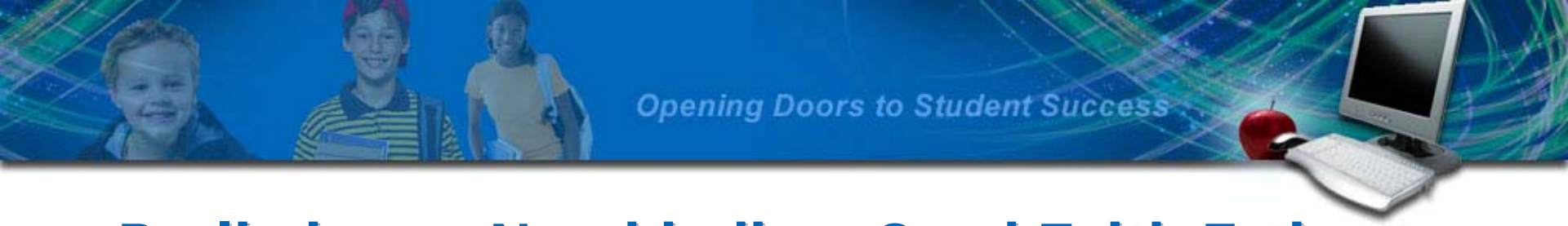


# Preliminary, Non-binding, Good Faith Estimate

## 4 Sites – 138 Voice Connections

| | Before E-Rate | | After E-Rate | |
|---|---|---|---|---|
| | Month | Annual | Month | Annual |
| Installation Charge Per Site | $0.00 | | $0.00 | |
| Total Service Charge - All Sites | $2,760.00 | $33,120.00 | $966.00 | $11,592.00 |
| Total Service Charge per Connection | $20.00 | $240.00 | $7.00 | $84.00 |
| Total Service Charge per Site | $690.00 | $8,280.00 | $241.50 | $2,898.00 |
| | | | | |
| **Customer Payments to Trillion** | **$2,760.00** | **$33,120.00** | | |


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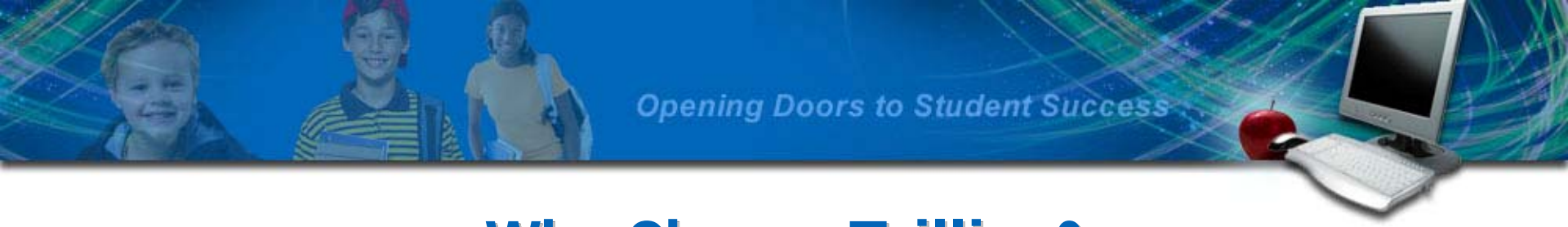
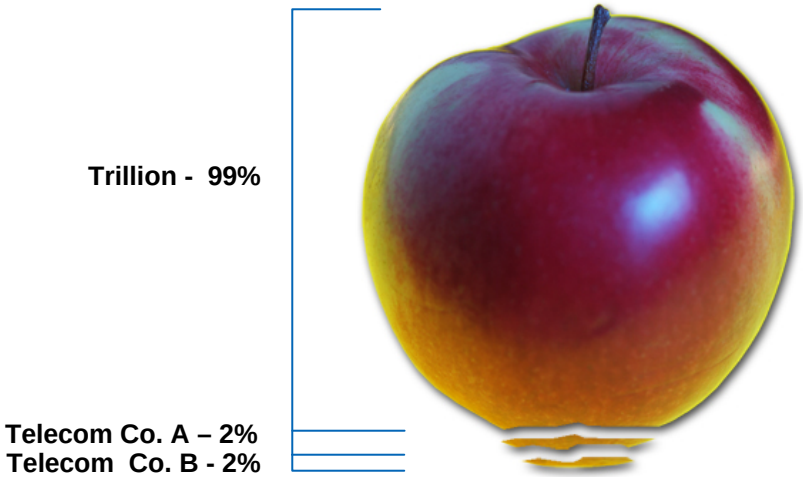



# Why Choose Trillion?

- Superior Solution Offerings
  - WAN
  - VoIP
  - Internet
- Lower Total Cost of Ownership
- Consistent Pricing Throughout Contract
- Quality of Service with Money-back Service Level Agreements
- Professional Expertise with Proven E-Rate Experience
- Service Excellence Delivered

**Percentage of Business Focused on K-12 Schools**




**Focused on the Success of our Education Partners Because Education is our Business**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