



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

July 2, 2010

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

Delivered via email

Federal Communications Commission
Attention: Gina Spade, Deputy Division Chief
Telecommunications Access Policy Division
445 12th Street SW
Washington, DC 20554

Delivered via Electronic Comments Filing System

RE: Response to USAC and Appeal to FCC: Northeast Texas Regional Education
Telecommunications Network (NTRETN) letter (6/4/10)

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 NTRETN dated June 4, 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 thousands of students in a rural and under-served portion of Texas will likely be denied crucial educational access. Trillion constructed a major network across the state of Texas, 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. For a majority of these thousands of children, there is no alternative broadband network, and it would be unlikely that another equivalent network could be deployed by any other service provider within a year's time.

During a phone conference on June 9, 2010, Mr. Scott Barash indicated that our comments would be

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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

In order to put the following questions and Trillion's responses 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, including distance learning, 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 and underserved communities. NTRETN has an elected board of directors consisting of 12 school district superintendents and the Region 8 ESC Executive Director. Former NTRETN employee David Mabe, a party to some of the communications and meals referenced in your request, was the Deputy Executive Director of Region 8. Although Mr. Mabe had significant responsibility for the day-to-day implementation and operations of NTRETN's WAN, he did not have the authority to approve the specifications for, or enter into any of, NTRETN's service contracts. That authority rests, instead, with NTRETN's board and Executive Director.

Trillion provides for NTRETN a custom network 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 (*see* attachment for a project map). 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. An upgrade that occurred on February 7, 2008 increased the bandwidth at one of three Internet POPs, taking the total bandwidth from the Internet backbone into the WAN from 190 Mbps to 240 Mbps.

To date, the implementation of this network has involved a Trillion 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.

As the timeline below illustrates, Trillion has been a service provider to NTRETN since early 2004.

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Trillion/NTRETN Timeline

Date	Event
January 21, 2004	Original Contract for WAN
February 2006	Upgrades
January 2007	Bandwidth upgrade and contract term extension
February 7, 2008	Minor Internet upgrade at one of three POPs

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Response to Questions

Date: June 4, 2010

David Mabe
Northeast Texas Regional Education Telecommunications Network
DMabe@reg8.net

Response Due Date: June 21, 2010

Dear Mr. Mabe:

We are in the process of reviewing your funding requests with Trillion Partners, Inc. for FY 2006-2010 to ensure that they are, in compliance with the rules of the Universal Service program. We have reviewed the documentation in your original response of June 18, 2009 as well as your reply dated August 10, 2009.

Failure to conduct a fair and open competitive bidding process free from conflict of interest.

Based on the documentation in your responses and the information provided by Trillion, your service provider, all FRNs committed for FY 2006, 2007 and 2008 will be rescinded because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you provided indicates that starting in 2005 and throughout your contractual relationship with Trillion, you were offered and accepted valuable gifts from the service provider. Specifically, Trillion provided meals, golf outings and travel. For yourself alone, total gifts by year were as follows: 2004 \$38.07; 2005: \$310.09; 2006: \$48.86; 2007: \$747.83; 2008 \$44.04. In both 2006 and 2008, a single meal exceeded \$20 per person and in 2005 and 2007, total gifts to one individual exceeded \$50. Finally, we note that according to Trillion's records, you did attend a dinner on 2/5/2008 at the Moonshine Bar and Grill, just prior to signing a contract with Trillion. (See NTxRETN Expenses.pdf and Receipt 400.pdf) The value of these gifts exceeds the federal gifts standards of \$20/person/occasion not to exceed \$50/person/per calendar year. Although these gifts may be acceptable under state law, the Federal Communications Commission has specifically determined that for another applicant in Texas that the offer and acceptance of gifts while allowable under Texas Penal Code does not mitigate the conflict of interest that is created when the you accepted the gifts, and therefore, you did not run a fair and open competitive bidding process, free from conflicts of interest as required by FCC 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>.

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-

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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).

If the FRNs should not be denied and you have alternative information, please provide an explanation and the supporting documentation.

Trillion provided a response to the routine business meals with NTRETN in a letter to USAC dated August 10, 2009. In this letter, as an example, Trillion explains the meal USAC points to at the TCEA event.

“The Texas Computer Education Association (TCEA) trade show is one of the largest education-oriented industry tradeshows held in the United States annually. The event is held in Austin, Texas, which is also where Trillion’s headquarters is located. Many school districts from across the state, as well as from across the country, attend the conference. On February 5, 2008, Trillion hosted a dinner during the conference at the Moonshine Patio Bar and Grill. Of the 20 dinner attendees, 14 were employees of Trillion’s customers who had worked with Trillion staff on the technical issues associated with the delivery of its services. Of the 14 school district attendees, five were employees of school districts that were consortium members of NTRETN. Six attendees were Trillion employees, including Trillion’s head of marketing, a relationship manager, Network Engineering Manager, and Network Operations Manager. Trillion’s CEO stopped by to say hello and thank the customers for their business, but did not stay for dinner. The consortium school district employees in attendance were all low-level technology employees of various school districts served by Trillion’s network, and had no input into the decision-making process for NTRETN contracts.”

The facts provided in the letter from USAC list events that, including this and 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.

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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 Consortium Board of Directors. Furthermore, no member of the Consortium Board of Directors received any such expense. The fact is, Trillion invested \$5,865,597 in capital in order to construct a network providing critical services with a total contract value of \$20,830,023, while the amount of the routine business meals and expenses only amounted to \$1,908 over a four year period across multiple individuals who did not have decision making authority. Please note that all meals, gifts and gratuities were provided after the initial contract was signed.

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.

Failure to keep an arms-length relationship with the service provider, especially during the competitive bidding process

Based on the documentation that has been provided to USAC, all FRNs except for (1) FY 2010 Application 752417, FRN 2043353, and (2) those FRNs that reference the original contract you signed with Trillion, based on Form 470 # 381790000479262, will be denied because you did not conduct a fair and open competitive bidding process. The documentation indicates that David Mabe engaged in numerous meetings, e-mail discussions, and verbal discussions with Trillion employees beginning in 2004 through the award of multiple contracts with Trillion. These discussions were not general marketing discussions, but rather show that you provided Trillion with inside information regarding your needs and details about their procurement process, that Trillion influenced the procurement process by providing input into your Request for Proposal (RFP) and FCC Form 470 to ensure that Trillion would be awarded the contract, and that before the bids were even submitted and the selection made, you signaled that they would award the contract to Trillion. Furthermore, Mr Mabe, as late as January 8, 2008 shared draft Forms 470 with Jennifer Carter, Trillion's E-rate Consultant, prior to the Forms 470 being posted thereby providing information to one service provider prior to the information being available to all potential bidders.

This also had been addressed in the letter from Trillion to USAC dated August 10, 2009, please see attached. To summarize, Trillion was awarded a contract in January of 2004 to build a WAN that covered over 9,000 square miles and would serve 80+ school locations serving over 150,000 students. In order to build a network of this size, constant communication and coordination between Trillion and the NTRETN team would be required. Per the thousands of e-mails that Trillion provided to USAC in the letter and response to Mel Blackwell of USAC dated June 8, 2009, there is more communication between NTRETN and Trillion than general marketing discussion, all of which occurred after the initial contract award. The fact is, Trillion built a huge network from the ground up, which took 19 months, and could not have done so without communicating with NTRETN staff. The majority of the communication is about the building of a large scale network after Trillion had been awarded the

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contract at the beginning of 2004.

Also, per the attached letter from Trillion to Scott Barash dated June 17, 2010, there is a big difference between communications with an incumbent service provider outside of a bid process than with a prospective service provider during the bid process. Trillion is concerned that USAC is basing its intent to deny this application, and others, based upon communications with a service provider that is in the process of building and servicing a network.

In regards to having the Form 470 shown to Trillion's E-Rate consultant, the date and time of the draft Form 470 being provided to Trillion is January 8, 2008 at 4:24PM Central. The Form 470 #756270000637608 was also posted on the same day, January 8, 2008. Also, note per the e-mail record that the draft 470 that was created by an outside E-Rate consultant (The Origin Group) and the posted 470 did not change. Therefore, Trillion had no influence on the Form 470 posting and also no advantage was provided to Trillion by such a filing.

Specifically, your answers to questions 6-16 in your response of August 10, 2009 seems to indicate that after Trillion invested in your region, other vendors were dissuaded from bidding. While expanding your network is consistent with FCC rule requirements, in this case, it appears as though you were actively encouraging other districts to go with a specific provider. You continued to work with Trillion to find new business for them and did not appear to remain open to other potential bidders.

Trillion has not been provided, nor has it requested, responses provided by the applicant for this set of questions, therefore can not comment on the applicants comments. However, Trillion is aware that USAC questioned Trillion previously about the same topic. E-mail communications occurred with Region 10 schools in Texas, and the e-mails discussed the potential of those schools joining the NTRETN network. Trillion responded to this in the letter dated August 10, 2009 with the following:

“...the Region 10 school districts were underserved by their consortium. They contacted NTRETN, since it was a geographically adjacent consortium, about the possibility of joining NTRETN's network. In response, Trillion offered to discuss with these school districts the feasibility of being added to the NTRETN network. According to USAC service provider training dated May of 2008, such a communication is appropriate because a service provider “can provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470.” Mel Blackwell and John Noran, “What to Do and How to Do It,” Service Provider Training, USAC Schools and Libraries Division (May 2008) (“May 2008 USAC Service Provider Training”) at 13. That is all that took place here. Trillion's response to the question whether Region 10 school districts could be connected to NTRETN's existing WAN network involved the provision of information to an applicant about its products and services. ... Region 10 ultimately decided to seek bids for WAN service on its own and awarded the contract to a Trillion competitor. As such, it is clear that Trillion's response to the Region 10-related questions did not harm the competitive bidding process for the resulting service or tilt that process in Trillion's favor.”

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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. Service providers are prohibited from filling out forms that require an applicant’s signature and the 470 must be complete by the entity that will negotiate with prospective service providers. See Caldwell Parish, ¶ 17.

Additionally, please provide responses to the following questions:

- In response to our question 5 regarding WAN A and WAN B, you state that Trillion recommended that you list separate the WANs in that manner. Based on your response, we will combine the two part of the WAN and which may result in service provider infrastructure costs requiring to be amortized. For each FRN where the WANs were applied for separately, and the services requested include service provider equipment costs, and/or an upfront or non-recurring (one-time) charge for capital investment by the service provider that is equal to or greater than \$500K please provide amortization information. Pursuant to the FCC’s “Brooklyn” decision, the costs must be amortized over at least a 3-year period. For additional information, see: <http://www.usac.org/sl/applicants/step06/wide-area-network-fact-sheet.aspx#5>. Please send a signed written response as to how many years you would like to amortize this cost. The amortization will be modified on a straight-line basis, i.e., the same dollar amount each year. For example; if the cost is \$600K, it will be amortized for 3 years at \$200K each year.

This was also addressed in the letter from Trillion to USAC dated August 10, 2009. In this letter, Trillion provided the following:

“The decision to file multiple FRNs for a particular project is always the decision of the applicant. In contract discussions with NTRETN, this agreement was divided into two separate and distinct phases, WAN A and WAN B. It is to the benefit of any service provider to have large and complicated projects such as this one divided into separate and distinct phases. Project division helps to reduce the risk that the project will not be completed due to weather, zoning/permitting or other delays that occur with respect to one of the phases. As can be seen by the chart provided in the response to question 8 below, WAN A and WAN B have different upgrade activities, including the amount of Internet bandwidth for each, and thus are appropriately treated as separate units.”

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Additionally, as previously stated, the original construction project was very large and complex, and had to be built in two phases. Please note that these e-mails contain discussions regarding the structure of a contract. It is not unusual in such circumstances to have multiple addendums and multiple FRNs.”

Question 8 Chart from as described above

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number	Funding Year	Reason: Description of Services
N/A	02/15/06	06/30/11	829880000 573553	01/11/06	1401392	497054	2006	WAN- A, B, & C upgrades (13 site bandwidth increase)
N/A	02/15/06	06/30/11	829880000 573553	01/11/06	1447586	497054	2006	Internet Access increase - 45Mb & Firewall add
NTRETN-WAN-VOICE-SLA	02/16/06	06/30/11	829880000 573553	01/11/06	1472742	497054	2006	Voice blanket add
SB-WAN-VOICE-SLA	02/16/06	06/30/11	829880000 573553	01/11/06	1472776	497054	2006	Sulphur Bluff Voice add
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1587611	574440	2007	Existing Service
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1587661	574440	2007	Existing Service
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1754808	607230	2008	Existing VoIP blanket (reduced participation rate of districts)
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1754878	607230	2008	Existing Sulphur Bluff (reduced participation rate of districts)
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1837138	669497	2009	Existing VoIP blanket (reduced participation rate of districts)
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1875591	669497	2009	Existing Sulphur Bluff VoIP
Trillion WAN B	01/25/07	06/30/14	361620000 610511	12/20/06	1569333	558270	2007	WAN-B upgrade/site add & increase 45 Mb & 100 Mb Internet upgrades (7 new WAN sites & WAN bandwidth increase).
Trillion WAN A	01/25/07	06/30/14	361620000 610511	12/20/06	1569291	558270	2007	WAN-A upgrade & increase existing 45 Mb Internet incl. WAN bandwidth increase
Trillion WAN A	01/25/07	06/30/14	361620000 610511	12/20/06	1724497	607230	2008	Existing WAN –A
Trillion WAN B	01/25/07	06/30/14	160720000 607817	12/20/06	1724572	607230	2008	Existing WAN –B
Trillion WAN B	01/25/07	06/30/16	160720000 607817	12/20/06	1837122	669497	2009	WAN-B upgrade & increase existing 45 Mb Internet & upgraded 200 Mb Internet with WAN bandwidth increase
Trillion WAN A	01/25/07	06/30/16	160720000 607817	12/20/06	1837107	669497	2009	WAN-A upgrade & existing 45 Mb Internet with WAN bandwidth increase
TX-NTRETN-011708-INET-AMEND-1936(Paris)	02/07/08	06/30/14	756270000 637608	01/08/08	1752974	607230	2008	Internet upgrade of additional 50 Mb to Paris POP
TX-NTRETN-011708-INET-AMEND-1936(Paris)	02/07/08	06/30/14	756270000 637608	01/08/08	1875545	669497	2009	Existing Internet of additional 50 Mb to Paris POP

This project was very large and complex and was split into two separate phases, but again, the decision to file multiple FRNs for a particular project is always the decision of the applicant.

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- Based on the responses that you provided to USAC in question 4 you indicate that schools other than Sulphur Bluffs ISD were not aware of the VoIP/VoTN services which you applied for on their behalf. Therefore, we will need to rescind or deny funding for all other entities since they did not provide specific authorization to you to file for those services on their behalf. Please provide a list of the schools, by Fund Year, who agreed to purchase the VoTN services prior to the filing of the Form 471. Funding for those school that first heard about or agreed to the offering after the filing of the Form 471 will be rescinded and/or denied.

As an example please see the attached Atlanta ISD (an NTRETN consortium member) Letter of Agency (LOA). We understand that the Atlanta ISD LOA is the standard form used with all the districts in the consortium. As you can see, NTRETN was in a position to conduct a bid process on behalf of the School Districts that had signed the letter of agency. It is Trillion’s understanding that Sulphur Bluffs ISD also did indeed have in place an LOA with NTRETN at the time for those very services. Also, please note that not every staff member, employee or other representative of a given school district will necessarily be aware of an LOA that is in place.

USAC guidelines in regards to this are based upon the following USAC training materials:

 <h3 style="text-align: center;">Letter of Agency</h3> <ul style="list-style-type: none"> ▪ Purpose <ul style="list-style-type: none"> – Authorizes the Consortium Leader to seek E-rate discounts on eligible goods/services on behalf of eligible consortium members <p>Consortium members must complete an LOA, <u>unless</u> the consortium participation is mandatory and a statutory/regulatory requirement.</p> <p style="text-align: center;">8 www.usac.org</p>	 <h3 style="text-align: center;">Letter of Agency</h3> <ul style="list-style-type: none"> ▪ LOA Tips cont'd <ul style="list-style-type: none"> – The description of services can be as general as "all E-Rate eligible services" or it can be more restrictive (e.g., "basic telephone service only") – Ensure the LOA description of services are the same services requested on the Forms 470 and 471. <p style="text-align: center;">11 www.usac.org</p>
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Source: USAC Training Materials: Consortium Review - What We Do and Why We Do It - Schools and Libraries Division - Washington, DC • Seattle • Denver • Chicago • Newark • Los Angeles • Atlanta September/October 2008

As is provided in the USAC guidelines, NTRETN had a Letter of Agency in place with each district including Sulphur Bluffs. In the sample provided for Atlanta ISD, the following is written:

“This is to confirm our participation in the Northeast Texas Regional Education Telecommunications Network E-rate Consortium for the procurement of Internet access and internal connections. I hereby authorize Northeast Texas Regional Education Telecommunications Network to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Libraries Division of the Universal Service Administrative Company on behalf of the Atlanta ISD. ... I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies).”

This clearly shows that NTRETN was authorized to procure internet access, telecommunications and other supported services, which includes Interconnected VoIP, on behalf of those districts that had

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signed the LOA.

- Regarding FY 2010 Application 752417, FRN 2043353, USAC's records indicate that this FRN is based on a contract signed 2/4/2010, and pursuant to the posting of Form 470 # 950030000800033, which was posted on 12/18/2009. Please indicate if Trillion was involved in the development of the specifications sought on the Form 470 and subsequent contract awarded to Trillion. Please indicate if you intended to entertain bids and have a fair and open competitive bidding process or if the School District intended to select Trillion for this new contract without use of a fair and open competition. Please provide detailed support for your responses, including any supporting documentation you can provide. Furthermore, please also indicate if any gifts were offered or received, other than those indicated on the NTxRETN Expenses.pdf document (attached), during the time leading up to the award of this contract.

The Form 470 # 950030000800033 was posted for the following:

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 <input checked="" type="checkbox"/> Telecommunications Services <i>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 an RFP, you risk denial of your funding requests.</i>		
a <input type="radio"/> 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): <input type="checkbox"/> the Contact Person in Item 6 or <input type="checkbox"/> the contact listed in Item 12.		
b <input checked="" type="radio"/> 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 <input type="radio"/> Check this box if you prefer discounts on your bill.	<input type="radio"/> Check this box if you prefer reimbursement after paying your bill in full.	<input checked="" type="radio"/> Check this box if you do not have a preference.
Service or Function:	Quantity and/or Capacity:	
Digital Transmission, Data Transport	Incremental pricing: 100MB, 250MB, 500MB, & 1GB call contact in (#12) for details	

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9 <input checked="" type="checkbox"/> Internet Access 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 <input type="radio"/> YES , I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one): <input type="checkbox"/> the Contact Person in Item 6 or <input type="checkbox"/> the contact listed in Item 12.		
b <input checked="" type="radio"/> 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 Internet Access Services you seek. Specify each service or function (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). 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 <input type="radio"/> Check this box if you prefer discounts on your bill.	<input type="radio"/> Check this box if you prefer reimbursement after paying your bill in full.	<input checked="" type="radio"/> Check this box if you do not have a preference.
Service or Function: High-Speed Connection to TETN Plus w/associated transport fees	Quantity and/or Capacity: provide 100MB, 250MB, 500MB, 1GB	

Trillion is not aware of any of its representatives being involved whatsoever in the creation of the Form 470, nor the specifications that led to the Form 470.

The Form 470 is open to a large range of potential bidders. *“Digital Transmission, Data Transport: Incremental pricing: 100MB, 250MB, 500MB, & 1 GB”* opens the bidding up to a large competitive group of service providers. At the time of bid, Trillion could not effectively provide the full range of potential bandwidths requested on the Form 470 for this wireless network. If Trillion had influenced the Form 470 requirements, the bandwidths requested would have been limited to solely the bandwidths Trillion could provide in this wireless network which would have been up to 250 Mbps.

Also, not all of the services requested on this Form 470 could be provided by Trillion. As an example, TETN Plus is a State of Texas initiative to provide high amounts of Internet 2 bandwidth to school districts. Trillion was not part of the TETN network and did not have facilities in place to provide TETN connectivity.

Also, Trillion previously provided all information in regards to meals, gifts and gratuities on June 8, 2009 and no further data is available.

You have 15 days to respond to this request. Your response is due by the close of business June 21, 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.

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: 973-599-6552
E-mail: pportan@sl.universalservice.org

Sincerely,

Trillion Partners, Inc.

Attachments:

- [Trillion Account Summary and Review June 8, 2009 – NTRETN](#)
- [Letter to Mr. Scott Barash dated June 8, 2010](#)
- [Letter to Mr. Scott Barash dated June 17, 2010](#)
- [Project Map](#)
- [Trillion letter to USAC dated August 10, 2009 regarding NTRETN](#)
- [Sample NTRETN Letter of Agency](#)

cc: [Catriona Ayer, USAC](#)
[Irene Flannery, FCC](#)

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Trillion Account Summary and Review

Customer Information

Name	NTxRETN					
Address	PO Box 1894, Mount Pleasant, TX, 75456					
Billed Entity # (BEN)	150217					
Lead Sales Representative	Randy Wright, Andy Pilarcik, Chuck Browning					
Customer of: (Direct Sales Communications)	Gary Gaessler	No	Roger Clague	Yes	Steve Davis	No
Trillion/E-Rate Consultant Communication	Communications with Jill Duncan, The Orgin Group. Standard erate filing communications.					
Customer Status	Active customer. Numerous upgrades to support district growth. Active reference, speaker, conference attendee. Hosted other schools site visits.					

Contract Information

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number
n/a	01/21/04	06/30/10	381790000479262	12/10/03	1156522	412094
n/a	01/21/04	06/30/10	381790000479262	12/10/03	1247212	454040
n/a	01/21/04	06/30/10	381790000479262	12/10/03	1269050	454040
N/A	01/21/04	06/30/10	381790000479262	12/10/03	1401382	497054
N/A	01/21/04	06/30/10	381790000479262	12/10/03	1401373	497054
n/a	01/21/04	06/30/10	381790000479262	12/10/03	1150140	412094

Extensions/Renewals/Upgrades

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number
N/A	02/15/06	06/30/11	829880000573553	01/11/06	1401392	497054
N/A	02/15/06	06/30/11	829880000573553	01/11/06	1447586	497054
NTRETN-WAN-VOICE-SLA	02/16/06	06/30/11	829880000573553	01/11/06	1472742	497054
SB-WAN-VOICE-SLA	02/16/06	06/30/11	829880000573553	01/11/06	1472776	497054
N/A	02/16/06	06/30/11	829880000573553	01/11/06	1587611	574440
N/A	02/16/06	06/30/11	829880000573553	01/11/06	1587661	574440
N/A	02/16/06	06/30/11	829880000573553	01/11/06	1754808	607230
N/A	02/16/06	06/30/11	829880000573553	01/11/06	1754878	607230
N/A	02/16/06	06/30/11	829880000573553	01/11/06	1837138	669497
N/A	02/16/06	06/30/11	829880000573553	01/11/06	1875591	669497
Trillion WAN-B	01/25/07	06/30/14	361620000610511	12/20/06	1569333	558270
Trillion WAN A	01/25/07	06/30/14	361620000610511	12/20/06	1569291	558270
Trillion WAN A	01/25/07	06/30/14	361620000610511	12/20/06	1724497	607230
Trillion WAN B	01/25/07	06/30/14	160720000607817	12/20/06	1724572	607230
Trillion WAN B	01/25/07	06/30/16	160720000607817	12/20/06	1837122	669497
Trillion WAN A	01/25/07	06/30/16	160720000607817	12/20/06	1837107	669497
TX-NTRETN-011708-INET-AMEND-1936(Paris)	02/07/08	06/30/14	756270000637608	01/08/08	1752974	607230
TX-NTRETN-011708-INET-AMEND-1936(Paris)	02/07/08	06/30/14	756270000637608	01/08/08	1875545	669497

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An Intel Capital funded company

Expense Summary

Governing State	Texas
Business Meals	In compliance with state guidelines
Gifts & Entertainment	In compliance with state guidelines

Customer Communications

Communications Provided	<table border="1"><tr><td>Begin Date</td><td>6/22/2004</td><td>End Date</td><td>2/7/2008</td></tr></table>	Begin Date	6/22/2004	End Date	2/7/2008
Begin Date	6/22/2004	End Date	2/7/2008		
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 damages 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 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 shows 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:



Competitive Bidding

- Tips
 - If applicants ask you for assistance:
 - Refer them to existing sources
 - Review all requirements set out by the applicant and follow them
 - Keep records of bids submitted
 - Keep copies of contracts

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www.usac.org

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



Training for Applicants

- You can provide training to applicants on E-rate if your training does not give an unfair advantage
 - Your training can include neutral information, including references to USAC, state, and public websites and training materials
 - Ask yourself if the content of the same training provided by a competitor would concern you

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www.usac.org

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



Pre-bidding Discussions

- Service providers may:
 - Discuss their product offering with applicants
 - Educate applicants about new technologies
- Service providers may **NOT**:
 - Offer/provide vendor-specific language for RFP or the Form 470
 - Provide template RFPs or Forms 470
 - Offer/provide assistance with Tech Plan
 - Offer/provide assistance with RFP

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



Competitive Bidding

- What is a service provider's role in the competitive bidding process?
 - Review posted Forms 470 and/or download Form 470 summary information
 - Respond to Forms 470/RFPs
 - Review applicant requirements and local and state procurement rules, including reasons for possible bid disqualification

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www.usac.org

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



Requirements - Competitive Bidding

- The applicant must conduct a fair and open competitive bidding process
 - All bidders are treated the same
 - All bidders have equal access to information
 - All bidders know what is required of them
 - All bidders know any reasons for disqualification

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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 distribution 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:



DO's

- Provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470
 - You can provide information on your available products and services before applicants file a Form 470
 - Once the Form 470 has been filed, you are limited to the role of bidder

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www.usac.org

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



Training for Applicants

- You can provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470
- Once the Form 470 has been filed, you are limited to the role of bidder

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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



Pre-bidding Discussions

- Applicants may:
 - Discuss their product offering with SPs
 - Learn about new technologies from SPs
- Applicants may **NOT** accept/use the following from service providers:
 - Vendor-specific language for RFP or the 470
 - Template RFPs or Forms 470
 - Assistance with tech plan
 - Assistance with RFP

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www.usac.org

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



Pre-bidding Discussions

- Service providers may:
 - Discuss their product offering with applicants
 - Educate applicants about new technologies
- Service providers may **NOT**:
 - Offer/provide vendor-specific language for RFP or the Form 470
 - Provide template RFPs or Forms 470
 - Offer/provide assistance with Tech Plan
 - Offer/provide assistance with RFP

4

www.usac.org

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 offering¹, and provide product demonstrations², 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

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 between 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

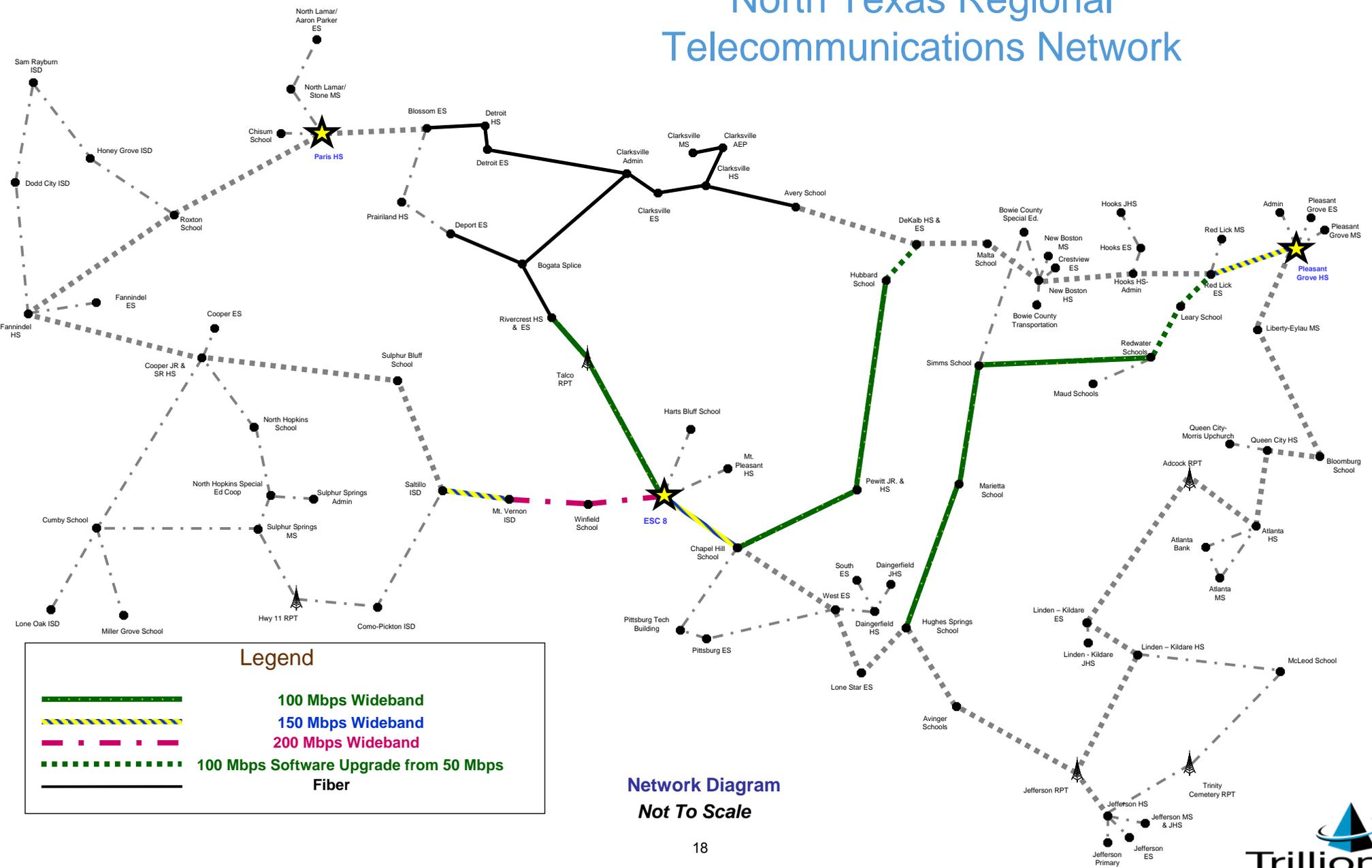
Trillion understands that setting a deadline can force hasty, premature decisions. The preliminary determinations of USAC to deny Trillion's customer applications cannot withstand even casual scrutiny as they contravene USAC's own guidance and are based on numerous factual errors. These determinations 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.

North Texas Regional Telecommunications Network



Legend

- 100 Mbps Wideband
- 150 Mbps Wideband
- 200 Mbps Wideband
- 100 Mbps Software Upgrade from 50 Mbps
- Fiber

Network Diagram
Not To Scale



August 10, 2009



Schools and Libraries Division, USAC
2000 L Street, N.W., Suite 200
Washington, D.C. 20036
Attention: Catriona Ayer - Senior Director, Program Integrity Operations

Re: Trillion Partners' Response to USAC's NTRETN-Related and Other Questions

Dear Catriona:

Thank you for your e-mail dated July 29, 2009, in response to the data Trillion provided on June 8, 2009. In your e-mail, you ask that Trillion clarify some of the communications, disclosed in the June 8, 2009 data, between Trillion and Trillion's largest customer, the Northeast Texas Regional Education Telecommunications Network (NTRETN). We understand the time-consuming and difficult nature of reviewing the data that we provided, especially the review of e-mails written many years ago without the benefit of understanding the context in which they were written. Trillion appreciates the opportunity to explain this data and put it in its proper context. Toward that end, we respond below to each of your questions in what we hope you will agree is a thorough and complete manner.

To be clear at the outset, we take seriously USAC's commitment to preventing fraud, waste and abuse and ensuring that E-Rate funds are used appropriately. As we explain below, close attention to the facts underlying your questions makes clear that Trillion's actions have not violated the spirit or letter of any Federal Communications Commission ("Commission") Schools and Libraries program competitive bidding requirements or Texas procurement law. See 54 C.F.R. § 55.504(a)-(c). The Commission's rules are aimed at curbing practices that prevent all bidders from operating on a level playing field and harm the competitive bidding process. See, e.g., *In re Requests for Review of Decisions of the Universal Serv. Adm'r by Approach Learning & Assessment Centers Santa Ana, Ca.*, DA 08-2380, 2008 WL 4758809, *3 (2008) (finding petitioners complied with competitive bidding requirements where "all bidders were on a level playing field" and "there was no actual harm to the competitive bidding process"); *In re Requests for Review of Decisions of the Universal Serv. Adm'r by Delano Joint Union High School Dist.*, DA 08-2362, 2008 WL 4758790, *3 (2008) (finding no improper vendor involvement in bidding process where there was "no harm to the competitive bidding process"); see also *In re Requests for Review of the Decisions of the Universal Serv. Adm'r by SEND Technologies, L.L.C.*, 22 F.C.C.R. 4950, 4952-54, ¶¶6-7 (2007) (holding that contact person's financial stake in service provider "involved a conflict of interest, and in fact, impeded fair and open competition"). Thus, as you point out in your e-mail, the Commission has found that a service provider's direct involvement in the bidding process can create a conflict of interest that inappropriately tilts the competitive playing field toward that provider and undermines the fairness and openness of the entire competitive process. See *In re Request for Review of the Decision of the Universal Serv. Adm'r by Ysleta Indep. Sch. Dist., El Paso, Texas*, 18 F.C.C.R. 26,407, 26,434, ¶60 (2003) (stating "direct involvement in an application process by a service provider would thwart the competitive bidding process"); see also *In re Requests for Review of Decisions of the Universal Serv. Adm'r by Caldwell Parish Sch. Dist.*, 23 F.C.C.R. 2784, 2790, ¶15 (2008); *In re Request for Review of Decisions of the Universal Serv. Adm'r by Mastermind Servs. Inc.*, 16 F.C.C.R. 4028, 4033, ¶10 (2000). Once the facts and circumstances raised by your questions are understood in their proper context, it should be clear that Trillion was not improperly involved in any competitive bidding process and did not otherwise harm any such process.

Confidential

- 1 -

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Because our responses to your specific questions would be best understood by those with background knowledge regarding our work for NTRETN, we first provide that background. We then respond to each of your questions separately in the pages that follow.

Overview

In order to put your questions and Trillion's responses 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, including distance learning, 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. David Mabe, a party to some of the communications referenced in your request, is the Deputy Executive Director of Region 8. Although Mr. Mabe has significant responsibility for the day-to-day implementation and operations of NTRETN's WAN, he does not have the authority to approve the specifications for, or enter into any of, NTRETN's service contracts. That authority rests, instead, with NTRETN's board and Executive Director.

Trillion provides for NTRETN a custom network 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 (see Appendix 1 for a project map). 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. An upgrade that occurred on February 7, 2008 increased the bandwidth at a single Internet POP, taking the total bandwidth from the Internet backbone into the WAN from 190 Mbps to 240 Mbps.

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. Trillion is proud of the tremendous benefits this massive project provides to NTRETN member school districts and their students, and we hope NTRETN and USAC are proud of it as well. Attached please find an article from *eSchool News*, dated December 19, 2007, that highlights the success of the project (see Appendix 2).

As the timeline below illustrates, Trillion has been a service provider to NTRETN since early 2004. Trillion's first contact with NTRETN was in late 2003. As is reflected in Trillion's high customer satisfaction rating (see Appendix 3), the high quality of Trillion's service has allowed it to maintain good working relationships with its customers' employees, and, as would be expected in such cases, friendships between Trillion employees and employees of its customers have developed. Trillion's relationship with NTRETN and some of its employees is no exception,

but nothing in that relationship has allowed Trillion to involve itself directly in the competitive bidding process, abuse that process or tilt it in Trillion's favor.

Trillion/NTRETN Timeline

Date	Event
January 21, 2004	Original Contract for WAN
February 2006	Upgrades
January 2007	Bandwidth upgrade and contract term extension
February 7, 2008	Minor Internet upgrade at one of three POPs

Detailed Response

1. The documents you provided indicate that since 2004, Trillion paid for 34 separate meals, five golf outings, three hotel stays and four flights for yourself and/or other members of NTxRETN staff or board members. Furthermore, one email indicates that a Trillion employee provided a golf driver to Mr. Mabe.

None of the expenditures referenced in question 1 were inappropriate. As the question suggests, over a four year period Trillion purchased from time to time modest meals for some NTRETN staff. In addition, on a few occasions Trillion paid travel and conference lodging expenses for NTRETN staff and paid golf outing fee expenses for Mr. Mabe. However, none of these very modest outlays were inappropriate or unlawful under Commission or Texas rules, and none had the effect of harming the competitive bidding process for bids involving Trillion or tilting that process in Trillion's favor. Moreover, as discussed below, Trillion did not supply or purchase a golf driver for Mr. Mabe.

As noted above, the network that Trillion built to service NTRETN is very large and complex, covering 9,000 square miles. The initial construction of the network occurred in two technically distinct phases, spanning a 19 month period in which there was continuous interaction between Trillion's employees, the NTRETN team and employees of NTRETN's member school districts. When a project of this magnitude is undertaken, there is constant communication and interaction among and between administrators, technologists, and school district operations personnel to plan, approve and build the network. Given that we were working so closely with NTRETN, an occasional meal with its personnel was part of the normal course of interaction related to completion of the project.

As is pointed out by USAC based upon the data Trillion previously provided, 34 separate meals involving Trillion and NTRETN-affiliated staff did take place from 2004 to 2008. However, all of these meals occurred after Trillion won the initial project bid and NTRETN was under a contract that was five years in length with Trillion. These meals also occurred over a four year period, which, again, was after the initial contract award date. Trillion's total meal expenditure allocated to NTRETN and its member school districts over the four year period was \$692.96, which means that Trillion spent an average of \$173.71 per year in meals after NTRETN became a customer. This represents less than \$20 per meal.

Because these meals were related to the performance of the contract, none of them were provided to any of the 12 NTRETN board members who had to approve the contract, or to the NTRETN Chairman, Thomas Long, who was the NTRETN signatory on the contract. Indeed, only one of the meals provided over the four year period involved a major decision maker at NTRETN, and this meal involved the Executive Director of the Region 8 ESC, and not members of NTRETN's board. All of the other meals were provided to technical staff involved in implementing the project. Furthermore, 80 percent of all meals provided by Trillion occurred more than five months prior to the next contract award date. No gifts were given to any NTRETN personnel who had service contract-related decision making authority and, as noted above, payment for these meals was permitted under Texas procurement law.

In the four years after Trillion was awarded the original contract, there has not been a single year in which Trillion did not have construction activity associated with the NTRETN network, whether in the form of initial network construction, the addition of new sites, increases in WAN bandwidth, or increases in Internet bandwidth. As a result, Trillion's Vice President of Construction, Ken Proud, has been in constant contact with NTRETN's project lead and technical coordinator, David Mabe, during this period. This continuous interaction, regarding a complex and challenging project, fostered a friendship between the two men. During the past four years, Ken Proud has played golf with Mr. Mabe five times. However, as Trillion's Vice President of Construction, Ken Proud is not under a sales commission plan and does not have any authority in regards to sales, and would have no reason to discuss with Mr. Mabe any data related to any bidding process. In no instance was any salesperson or other executive from Trillion in attendance during the golf outings. Moreover, each golf outing occurred more than three months prior to a contract award date, and there is no indication that the two men ever discussed any issues relating to a competitive bidding process during those times.

Contrary to the implication of question 1, Trillion never purchased or provided a golf driver to Mr. Mabe. In the e-mail dated August 16, 2007, referenced in the question, Ken Proud, writes to Mr. Mabe (who lost his hand in a childhood accident), "I enjoyed our outing even though I got trounced. You played well. You better be treating that driver real special!" The two men did play golf together the prior week and Mr. Mabe used a new driver, which he had purchased for himself. In the e-mail, Ken Proud was simply complimenting Mr. Mabe on his performance with his new club. Please note that in the e-mail documents Trillion provided, Trillion highlighted the golf outing receipt in the subsequent e-mail and no golf driver is present on that receipt.

One night's lodging was provided in 2005 by Trillion to Mr. Mabe in connection with a speaking engagement and presentation titled, "Is Your Classroom Ready for Technology Based Learning," that took place at a conference held in Houston, Texas hosted by Intel's Center for Digital Education. This conference, and Trillion's subsequent reimbursement for expenses, was permitted under Texas law.

Travel-related expense reimbursements were also provided for NTRETN's attendance and presentation at Trillion's Visionaries in Technology Education Council (VTEC) in 2006 and 2007.

Detailed discussion regarding the annual VTEC conference is provided below. Regarding the VTEC-related expenditures, in 2006 Mr. Mabe declined to attend the event; however, a lower level NTRETN staff person, Daniel Dutton, who has no influence over any of the NTRETN competitive bidding processes, did attend. Trillion reimbursed total expenses for Mr. Dutton of \$680 for one flight, an airport shuttle charge, and two nights in a modest hotel. In 2007, Mr. Mabe attended the conference. Trillion reimbursed total expenses for him of \$534 for mileage

reimbursement, ground transportation while at the event, and two nights in a modest hotel. This and subsequent reimbursements for expenses were permitted under Texas law.

A summary of all related expenditures is attached (see Appendix 4).

The FCC's rules require a fair and open competitive bidding process free from conflicts of interest. Under the Commission's rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, "direct involvement in an application process by a service provider would thwart the competitive bidding process" (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)).

Communications between Applicants and service providers that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means there are no secrets in the process, such as information shared with one bidder but not with others, and all bidders know what is required of them. The [FCC] Form 470 or the RFP should be clear about the products, services, and quantities the [A]pplicant is seeking.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the [A]pplicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. See <<http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>>

The receipt of gift from service providers or potential service providers may therefore unduly influence the competitive process even if they were in compliance with state and local procurement requirements.

While USAC remains concerned about all of the gifts and meals you provided to NTxRETN, we are especially concerned about a meal that Trillion paid for on February 5, 2008 at the Moonshine Patio Bar and Grill. This meal was paid for by Trillion two days before a contract renewal with NTxRETN was signed on February 7, 2008. Please provide

a full and complete explanation of the circumstances surrounding this meal, including the names, titles and affiliations of the persons who attended, what was discussed, and why Trillion thought that it was appropriate to host this dinner during the competitive bidding process. In addition, please provide an explanation of why Trillion thought that the gifts provided to NTxRETN, including the golf and the potential golf driver, were appropriate and consistent with all applicable rules and did not compromise any competitive bidding or create any conflicts of interest.

The Texas Computer Education Association (TCEA) trade show is one of the largest education-oriented industry tradeshows held in the United States annually. The event is held in Austin, Texas, which is also where Trillion's headquarters is located. Many school districts from across the state, as well as from across the country, attend the conference. On February 5, 2008, Trillion hosted a dinner during the conference at the Moonshine Patio Bar and Grill. Of the 20 dinner attendees, 14 were employees of Trillion's customers who had worked with Trillion staff on the technical issues associated with the delivery of its services. Of the 14 school district attendees, five were employees of school districts that were consortium members of NTRETN. Six attendees were Trillion employees, including Trillion's head of marketing, a relationship manager, Network Engineering Manager, and Network Operations Manager. Trillion's CEO stopped by to say hello and thank the customers for their business, but did not stay for dinner. The consortium school district employees in attendance were all low-level technology employees of various school districts served by Trillion's network, and had no input into the decision-making process for NTRETN contracts.

The names, titles, and affiliations of the known Trillion customer employees in attendance at the dinner are:

<u>Customer</u>	<u>Attendee</u>	<u>Title</u>	<u>Total Guests</u>	<u>NTRETN Member District</u>
Callisburg ISD	Jeff Threadgill	Network Mgr	1	
Chapel Hill ISD	Kerri Ottmer & other employee	Technology Manager	2	✓
Clarksville ISD	Howard Taylor & other employee	Director Of Tech	2	✓
Dimmitt ISD	Karen Newman & 2 other employees	Technology Coordinator	3	
Gregory-Portland ISD	Andrew Guerra & other employee	Director of Technology	2	
Jefferson ISD	Jeremy Peeler	Director of Tech	1	✓
Nederland ISD	Cynthia Laird & other employee	Director of Inst'l Tech	2	
Paradise ISD	James Grisham	Technology Director	1	
Total Guests			14	

What was discussed, and why Trillion thought that it was appropriate?

The February 5, 2008 dinner was purely a social event held in conjunction with a national industry trade show. Its purpose was to maintain good working relationships with existing customers while they were in town for a conference. While the topics of conversation varied, we

have no knowledge of any conversations related to any competitive bidding process. Attendees discussed the weather, football, and how the conference was going. No individuals with decision-making authority with respect to future bids and/or contracts with NTRETN were in attendance.

An explanation of why Trillion thought that the gifts provided to NTxRETN, including the golf and the potential golf driver, were appropriate and consistent with all applicable rules and did not compromise any competitive bidding or create any conflicts of interest.

As described previously in this response, the meals and entertainment provided to NTRETN employees were over a four year period and were merely intended to foster good working relations among the parties to a lengthy contract involving a substantial and complex construction project requiring close cooperation among the contracting parties. Moreover, considering the time frame involved and sums spent, these were relatively minor expenditures. In making these expenditures, Trillion did nothing to involve itself directly in or harm the competitive bidding processes that NTRETN conducted over the last four years, and did nothing to cause Trillion to obtain information that tilted the competitive playing field in its favor. Moreover, as previously noted, all meals and entertainment provided by Trillion were permitted under Texas procurement guidelines. Finally, as previously indicated, Trillion did not supply a golf driver to Mr. Mabe or anyone else at NTRETN.

2. E-mail communications starting in 2005 and going through 2009 state that Trillion and NTxRETN are “partners.” Please provide a full explanation of the partnership and explain if there are any legal or financial ties between Trillion and Mr. Mabe personally or Trillion and NTxRETN and/or Region 8.

Trillion does not have a partnership arrangement with NTRETN or any other customer. Nor are there any legal or financial ties between Trillion and Mr. Mabe personally. There are also no legal or financial ties between Trillion and NTRETN or Region 8 other than the Services Agreements signed by both parties. The term “partners” is sometimes used by Trillion’s staff to refer to its customers as “education partners” rather than as “customers.” The term is intended to convey Trillion’s strong commitment to helping its customers educate their students by providing best-in-class broadband services. The term “Education Partner” is a marketing – not a legal – term, and in no way relates to a formal partnership. Attached please find an example of Trillion’s usage of the term “partner” in the context of a typical customer communication (see Appendix 5).

3. In an e-mail dated January 11, 2006, NTxRETN requested input from Trillion on the language in their Form 470. We have not located Trillion’s response to this e-mail. If we have overlooked it, would you please direct us to the location of the response.

Our records indicate that Trillion did not respond in writing to this e-mail. Moreover, Trillion’s E-Rate attorney has no recollection of providing a verbal response to the message. As outlined in the data previously provided, Trillion has had an E-Rate attorney on staff since 2003 and in 2006 (after the date of the referenced e-mail) Trillion added to its staff an E-Rate specialist. As has been previously explained, Trillion’s E-Rate experts have received extensive USAC training. Accordingly, Trillion’s E-Rate experts understand that a service provider is only allowed to offer “neutral” guidance as it relates to Form 470 filings. Consistent with this understanding, Trillion’s practice has been to have all Form 470-related matters referred to Trillion’s E-Rate experts, who in turn respond to the Form 470-related questions. Therefore, even if a verbal response to this request had been provided, (and, as stated previously, Trillion’s E-rate attorney does not recall

providing such a response), such response would have come from a Trillion E-Rate expert who had been trained by USAC to offer only neutral guidance and avoid communications that would unfairly tilt the competitive bidding process in Trillion's favor.

4. In an e-mail exchange on June 19, 2006 and June 20, 2006, copies of which are provided as an attachment here, NTxRETN and Trillion discuss presenting a proposal under which Trillion would expand the current WAN, working in coordination with NTxRETN. Please explain whether this proposal was related to subsequent contracts between Trillion and NTxRETN and funding requests to USAC. If it was, please explain how the coordination between Trillion and NtxRETN at this stage did not run afoul of the FCC's rules requiring fair and open competitive bidding.

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 whether they could be added to its consortium. The e-mail exchange to which question 4 refers highlights the fact that NTRETN wanted to discuss 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, 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. Moreover, as further indication that the e-mail exchange did not have the effect of giving Trillion an unfair advantage in any future competitive bidding process, we note that in this instance, Trillion did not provide a responsive proposal, or provide an estimate of any kind in response to the NTRETN inquiries.

5. E-mail communications in 2007 and 2008 indicate that after NTxRETN submitted its consortium application seeking funding for the VOIP/VoTN services provided by Trillion under contract with NTxRETN, Trillion and NTxRETN worked together to convince consortium members who at that time had not yet agreed to purchase the services from Trillion. The e-mail communications indicate that several presentations with Trillion and Shortel were conducted to try to convince the districts to sign on to getting the services once the FCDL was issued. In this scenario, applicants were then attempting to essentially perform a competitive bidding process after the award of the contract as they tried to compare the Trillion solution to other solutions all while working against the deadline for receiving the services. Was NTxRETN contractually bound to Trillion for services to be provided to the consortium members before the consortium members agreed to receive service from Trillion? What is the relationship between NTxRETN's Agreement with Trillion for these services and the subsequent service agreements with the individual consortium members? Does each Block 4 entity pay NTxRETN the co-pay for the services provided by Trillion or does each Block 4 entity pay Trillion directly?

NTRETN performed a competitive bidding process and then signed a Services Agreement with Trillion on February 16, 2006 to provide telephone service over the WAN to all school districts that were members of NTRETN. However, under the Services Agreement Trillion would only deliver the telephone service to member districts that chose to sign a written Service Order Request. (see page 6, Section 8.9 of the Agreement, Appendix 6). In effect, NTRETN competitively bid the WAN-based telephone service for all members of the NTRETN consortium, but none of the member school districts were required to use the service. Trillion only has a contractual relationship for services with NTRETN, and not with NTRETN's individual members, and is therefore paid strictly by NTRETN. Because the competitive bidding process for the WAN-based telephone service had already taken place, there was no requirement for each school district to individually bid for the service. Trillion's presentations to NTRETN member school districts therefore did not constitute its involvement in any bidding process governed by the Commission's competitive bidding rules.

6. In an e-mail dated June 10, 2007, a district asked NTxRETN for impartial advice on how to compare Trillion's solution with a Cisco solution. NTxRETN then forwarded that email to Trillion to get a response but directed Trillion not to disclose to the school district that they were aware of the email. Please provide a full and complete explanation of your actions in response to this e-mail.

We believe this e-mail was sent because an individual NTRETN member school district had received a bid relating to the possible purchase of equipment (Internal Connections) from a Cisco provider and wanted to know from NTRETN whether the bid was competitive with the service that NTRETN was receiving from Trillion. Because Trillion does not offer Internal Connections, we assume that NTRETN was asking for a purchase quote from Trillion in order to allow the member school district to understand better the bid from the Cisco provider. Our records indicate that Trillion did not respond to this message, presumably because Trillion did not offer Internal Connections.

Please also note that Mr. Mabe, in a subsequent e-mail in the same e-mail string, informed the relevant member school district employee, Butch Foster, that he would ask Trillion for a purchase of equipment quote. The fact is, however, that Trillion did not participate in a competitive bidding process associated with this request. Moreover, the particular school district is not a voice service customer, nor has it ever been, of Trillion's.

7. Please explain the separation between WAN A and WAN B in the agreements with NTxRETN. Both of these WANs appear to be two halves of the same single whole. In fact, NTxRETN's consultant even agreed with this determination. Please provide a full explanation of why the two networks should not be considered a single unit.

a. With regard to the e-mail dated July 2, 2007 from Scott Smyth to Kim Thompson and copied to David Mabe and Andy Pilarcik, please provide a full and complete explanation of the "strategy" that needed to be discussed prior to the applicant responding to a question from PIA.

The July 2, 2007 e-mail message from Scott Smyth to Kim Thompson was a reference to the fact that service providers are only allowed to provide assistance and cannot dictate responses to PIA reviewers. It was Trillion's intent to provide assistance to the customer in a routine response to a PIA question. The term "strategy" was a poor choice of words because no other meaning was intended and no other assistance was provided.

b. Please provide a full and complete explanation of the e-mail from Scott Smyth to Jill Duncan dated July 3, 2007 and explain how the services and the manner in which they were contracted for are consistent with FCC rules regarding amortization of service provider infrastructure.

The decision to file multiple FRNs for a particular project is always the decision of the applicant. In contract discussions with NTRETN, this agreement was divided into two separate and distinct phases, WAN A and WAN B. It is to the benefit of any service provider to have large and complicated projects such as this one divided into separate and distinct phases. Project division helps to reduce the risk that the project will not be completed due to weather, zoning/permitting or other delays that occur with respect to one of the phases. As can be seen by the chart provided in the response to question 8 below, WAN A and WAN B have different upgrade activities, including the amount of Internet bandwidth for each, and thus are appropriately treated as separate units. Additionally, as previously stated, the original construction project was very large and complex, and had to be built in two phases. Please note that these e-mails contain discussions regarding the structure of a contract. It is not unusual in such circumstances to have multiple addendums and multiple FRNs.

8. For each agreement between NTxRETN and Trillion for which E-rate funding has been requested beginning with Funding Year 2006 to date, please answer the following questions and provide the requested documentation:

i. For each additional and replacement contract provide a description of the reason for needing the additional or replacement contract.

ContractNumber	Award Date	End Date	470 Number	470 Date	FRN Number	471 Number	Funding Year	Reason: Description of Services
N/A	02/15/06	06/30/11	829880000 573553	01/11/06	1401392	497054	2006	WAN- A, B, & C upgrades (13 site bandwidth increase)
N/A	02/15/06	06/30/11	829880000 573553	01/11/06	1447586	497054	2006	Internet Access increase - 45Mb & Firewall add
NTRETN-WAN-VOICE-SLA	02/16/06	06/30/11	829880000 573553	01/11/06	1472742	497054	2006	Voice blanket add
SB-WAN-VOICE-SLA	02/16/06	06/30/11	829880000 573553	01/11/06	1472776	497054	2006	Sulphur Bluff Voice add
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1587611	574440	2007	Existing Service
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1587661	574440	2007	Existing Service
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1754808	607230	2008	Existing VoIP blanket (reduced participation rate of districts)
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1754878	607230	2008	Existing Sulphur Bluff (reduced participation rate of districts)
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1837138	669497	2009	Existing VoIP blanket (reduced participation rate of districts)
N/A	02/16/06	06/30/11	829880000 573553	01/11/06	1875591	669497	2009	Existing Sulphur Bluff VoIP
Trillion WAN B	01/25/07	06/30/14	361620000 610511	12/20/06	1569333	558270	2007	WAN-B upgrade/site add & increase 45 Mb & 100 Mb Internet upgrades (7 new WAN sites & WAN bandwidth increase).

Trillion WAN A	01/25/07	06/30/14	361620000 610511	12/20/06	1569291	558270	2007	WAN-A upgrade & increase existing 45 Mb Internet incl. WAN bandwidth increase
Trillion WAN A	01/25/07	06/30/14	361620000 610511	12/20/06	1724497	607230	2008	Existing WAN -A
Trillion WAN B	01/25/07	06/30/14	160720000 607817	12/20/06	1724572	607230	2008	Existing WAN -B
Trillion WAN B	01/25/07	06/30/16	160720000 607817	12/20/06	1837122	669497	2009	WAN-B upgrade & increase existing 45 Mb Internet & upgraded 200 Mb Internet with WAN bandwidth increase
Trillion WAN A	01/25/07	06/30/16	160720000 607817	12/20/06	1837107	669497	2009	WAN-A upgrade & existing 45 Mb Internet with WAN bandwidth increase
TX-NTRETN-011708-INET-AMEND-1936(Paris)	02/07/08	06/30/14	756270000 637608	01/08/08	1752974	607230	2008	Internet upgrade of additional 50 Mb to Paris POP
TX-NTRETN-011708-INET-AMEND-1936(Paris)	02/07/08	06/30/14	756270000 637608	01/08/08	1875545	669497	2009	Existing Internet of additional 50 Mb to Paris POP

ii. Given that NTxRETN stated on the FCC Forms 470 that it was under contract with Trillion, could the FCC Form 470 postings have resulted in NtxRETN breaking its contract with you and contracting with a different vendor? Explain in full.

The answer to this question is "yes." Because NTRETN was under contract for services with Trillion, this fact was correctly noted by NTRETN on its Form 470. However, NTRETN has a contractual right to terminate its contracts with Trillion. This right can be found under Section 7.2(d) of the 2006 Service Agreements and Section 7.2(b) of the subsequent agreements. (see Appendix 6). Consequently, if NTRETN happened to select a different service provider under any of its competitive bidding processes, it would have been able to provide written notice of termination to Trillion pursuant to the contracts' termination provisions and, thereafter, begun receiving service from the new service provider under a new contract with that provider.

9. In an e-mail dated October 14, 2007, Andy Pilarcik and David Made engaged in a discussion regarding how to encourage schools to join the NTxRETN WAN, and specifically information that would need to be gathered at the 470 stage. Please explain how this discussion is consistent with the FCC's rules requiring a fair and open competitive bidding process.

Because the e-mail string discusses several different topics, we will address each below (in the same numerical order they are addressed in the e-mail). When placed in proper context, none of these communications constituted Trillion's direct involvement in a competitive bidding process that upset the competitive playing field or otherwise tilted the process in Trillion's favor.

1. Cooper ISD is an NTRETN member school district. As previously discussed in response to question 5, NTRETN had already competitively bid and then awarded a contract to Trillion for the services mentioned. NTRETN asked Trillion to provide Cooper ISD with a quote for non E-Rate eligible handsets and a service order request for the quantity of connections required.
2. As previously discussed in response to question 5, NTRETN had already competitively bid and then awarded a contract to Trillion for the services mentioned. NTRETN's request was made in an effort to understand for each member school district the number of connections

that had a service order request signed for them, as well as the number of additional connections to be added.

3. This part of the e-mail addressed an adjacent Region (Region 10) unrelated to NTRETN or Region 8. Although, at the request of Region 10 school districts, NTRETN took steps aimed at bringing the Region 10 school districts into the NTRETN consortium, the Region 10 school districts ultimately decided not to join NTRETN, but to instead rely on WAN service competitively bid by Region 10. Although Trillion bid for the Region 10 WAN contract, it was awarded instead to a Trillion competitor.

As noted previously, the Region 10 school districts were underserved by their consortium. They contacted NTRETN, since it was a geographically adjacent consortium, about the possibility of joining NTRETN's network. In response, Trillion offered to discuss with these school districts the feasibility of being added to the NTRETN network. According to USAC service provider training dated May of 2008, such a communication is appropriate because a service provider "can provide information to applicants about products or services – including demonstrations – before the applicant posts the Form 470." Mel Blackwell and John Noran, "What to Do and How to Do It," *Service Provider Training, USAC Schools and Libraries Division (May 2008)* ("May 2008 USAC Service Provider Training") at 13. That is all that took place here. Trillion's response to the question whether Region 10 school districts could be connected to NTRETN's existing WAN network involved the provision of information to an applicant about its products and services. As discussed above, Region 10 ultimately decided to seek bids for WAN service on its own and awarded the contract to a Trillion competitor. As such, it is clear that Trillion's response to the Region 10-related questions did not harm the competitive bidding process for the resulting service or tilt that process in Trillion's favor.

4. Similarly, Rains ISD is a school district in the neighboring Region 7 consortium. This school district was also being underserved by its consortium and wanted to discuss the feasibility of joining the NTRETN network. Trillion offered its assistance, if needed, again with the intent of merely providing permissible information of the type provided to the Region 10 school districts.
5. As addressed in the discussion regarding Region 10 schools, Caddo Mills ISD is a Region 10 school. Trillion's response to the request was essentially a review of whether it would be possible for Caddo Mills ISD to join the NTRETN network provided by Trillion. Trillion's salesperson responded with all of the details that would be required during the bid process, none of which were provided by the customer in this communication. This was also permitted under the same USAC training materials noted above, and did not constitute involvement in any competitive bidding process or otherwise tilt the process in Trillion's favor.

10. In an e-mail dated December 13, 2007, NTxRETN states that it had received a proposal from Trillion regarding connecting one of the schools or consortium members to the WAN. You also state that you need to file a Form 470 within the next couple of weeks. This e-mail suggests that NTxRETN was receiving proposals from Trillion prior to posting your FCC Form 470. Please provide a copy of the proposal that was sent to NtxRETN that is referenced in this e-mail and any similar proposals as suggested in the e-mail. Please explain this situation in full.

The message from Mr. Mabe to Caddo Mills ISD contained an incorrect statement. Trillion did not send a proposal to NTRETN. As stated previously, Caddo Mills ISD is a Region 10 school district that was underserved by Region 10 and had inquired whether it might be possible for it to connect to the NTRETN network. NTRETN requested of Trillion a preliminary design and estimate as to whether it would even be feasible to add this school district to the NTRETN network. That Preliminary Design and Good Faith Estimate is attached (see Appendix 7). The preliminary design shows that it would be possible to connect the Caddo Mills ISD to the network and the estimate of what it would cost. This is very similar to any school district asking an alternate provider to the incumbent if it has facilities to provide service and what the budgetary estimate would be to utilize those facilities, and is a common industry practice. The only information that is required to assess the feasibility of a connection to a new location is the address of the location to be provided services. This address is publicly available information.

Later that year, NTRETN filed a Form 470 to which Trillion responded with a Proposal (see Appendix 7). Importantly, a comparison of the attached preliminary design and estimate versus the Trillion proposal shows that the two were very different. The design was completely different, the costs were completely different, and the proposal included a services agreement, among other significant differences. Furthermore, Trillion did not ultimately win the project bid, making it clear that the earlier information it had provided did not undermine the competitive bidding process for that service.

11. In an e-mail dated January 8, 2008, NTxRETN provided a copy of their draft Form 470 to Trillion and ask for their thoughts. Please provide a full and complete explanation of your actions in response to this e-mail.

NTRETN was aware that our E-Rate experts have been trained by USAC to follow all applicable Commission rules. The only reason why NTRETN would have sent its draft Form 470 to Trillion was to insure that it was technically compliant. Trillion's E-Rate specialist responded to this inquiry and provided neutral advice by saying only "I think it looks fine," which simply acknowledged that the Form 470 was technically compliant. This cursory response in no way influenced the content of NTRETN's Form 470. As stated previously, Trillion's E-Rate experts, including its E-Rate specialist, have been trained by USAC that a service provider is only allowed to offer "neutral" guidance as it relates to Form 470 filings, and that is all that Trillion's E-Rate specialist provided in this instance. Accordingly, Trillion's E-Rate specialist's response did not constitute direct involvement in a competitive bidding process and did not harm that process.

12. In an e-mail dated January 10, 2008, NTxRETN indicated that it took Trillion's advice and posted another Form 470 to add another site and requested that Trillion add this site to their proposal. Please explain.

It appears from the e-mail that NTRETN had inquired of Trillion's E-Rate attorney, one of its E-Rate experts, whether a filed Form 470 would authorize service to a site not listed in that Form 470. The inquiry thus sought only technically-neutral advice and we believe that the only information that Trillion provided in response was that the site would not have been eligible for funding if it was not included in the eligible sites on the Form 470. Advice about whether to add a missing site is clearly vendor neutral and Trillion was not directly involved in the competitive bidding process as a result of providing it. It bears mentioning again that Trillion's E-Rate experts, including its E-Rate attorney, have been trained by USAC to know that a service provider is only allowed to offer "neutral" guidance as it relates to Form 470 filings, and that is all that Trillion's E-Rate attorney provided in this instance.

13. In an e-mail dated January 22, 2008, during the competitive bidding process for Funding Year 2008, NTxRETN explained their concerns regarding your bid response and also the anticipated reaction from the NTxRETN board to them. Trillion then submitted a revised bid to address these concerns. Please explain why you believe that this constituted a fair and open competitive bidding process.

At the time the e-mail was sent by NTRETN, Trillion assumed that NTRETN was asking clarifying questions of each bidder, which is consistent with a fair and open competitive bidding process. Moreover, if NTRETN only provided Trillion with this set of information, USAC training materials allow a service provider to "[n]egotiate a contract with an applicant if selected as the most cost-effective bid." *May 2008 USAC Service Provider Training at 26*. This same authority to negotiate a contract is recognized under Texas law. Moreover, although Trillion has no way of knowing whether other service providers responded to NTRETN's Form 470 with bids for the services Trillion sought to provide, NTRETN would certainly have the right to attempt to resolve outstanding contract-related issues with Trillion after Trillion had submitted its services proposal if Trillion had, in fact, been the only bidder. Finally, it should be noted that Trillion did not win the larger WAN portion of this bid, but only the small Internet upgrade portion (worth only about \$63,906 per year, which represents approximately 3% of the total annual amount associated with NTRETN). The e-mail referenced in this question related to the WAN portion, which, as noted previously, stemmed from an unsuccessful effort by NTRETN to connect Region 10 school districts to its existing WAN (see Response to Question 9, part 3 above).

Questions not related to NTxRETN

1. Please provide a full and complete description of the VTEC conference. If we have overlooked information you have already provided, please direct us to the location of that information.

Trillion Customer Councils (called VTEC in 2008 - "Visionaries in Technology Education Council") were created to allow demonstrated visionary technology educators to come together to share with each other the best practices in the field and their vision of the future in educational technology. At VTEC, each customer participant made a presentation to their colleagues describing how they utilized technology in their schools to improve education for their students. This allowed school districts to share unique and novel technology-based education instruction methodologies and techniques with other school districts. It is Trillion's opinion that these types of educational exchanges benefit significantly the educational environment for students. Trillion's benefit from the VTEC conference was to gain feedback from customers about our existing products and services, learn about product improvement information, and understand how we could improve our customer service. The event also provided a networking opportunity for our employees and our customers who work together on a day-to-day basis. In addition, at these conferences Trillion arranged for highly-accredited outside speakers to make presentations on topics of interest to the educational technology community, such as last year's presentation, "Emerging Technology Trends and Implications for Educational Practice," by Dr. Paul Resta from the University of Texas at Austin.

Only existing customers were invited to the VTEC conferences. Moreover, no VTEC conferences were held during a bidding process for those customers for any services that Trillion provides. The VTEC conferences were held to facilitate product feedback and industry networking from existing clients; they were not sales events. As such, these events did not impact any competitive bidding processes.

A copy of the 2008 VTEC agenda is attached (see Appendix 8). It should also be noted that Trillion is no longer sponsoring the VTEC events due to the implementation of its new code of conduct.

2. In our May 14, 2008 letter to you, we requested that you provide the following:

a. List of all gifts – including monetary gifts – offered or provided by Trillion officers/employees to these applicants including a description of the gift, to whom it was offered/provided, when it was offered/provided, and its value.

b. List of all meals, entertainment and/or trips offered or provided by Trillion officers/ employees to these applicants including a description of the meals, entertainment and/or trips, to whom it was offered/provided, when it was offered/provided, and its value.

The information you have provided in response to this request includes most of the information, but does not indicate “to whom” the gift, meal, entertainment, trip was offered/provided. By “to whom” we meant the name of the customer employee to whom it was offered/provided. Would you please update your response to provide this information.

Trillion will provide this information in the exact same form as previously provided with one additional column added for employee name, and the information will be added on a compact disc that will be delivered to you under separate cover.

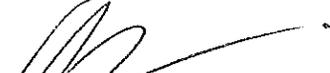
* * *

We hope that the information contained in this letter, the attached appendices, and the compact disc that will be sent to you under separate cover fully answer your questions concerning the data that Trillion has previously provided. Trillion is committed to complying with the Commission's competitive bidding rules, as well as Texas procurement law, and appreciates the opportunity to explain the data and response it has provided and put it into its proper context. Viewed in this light, Trillion believes that the information it has provided demonstrates that it has faithfully complied with the Commission's requirements. If you have additional questions or require further information, please do not hesitate to contact us.

Regards,



Bear Poth
President & CEO



Angela Pierce
CFO



Kevin Bethke
COO

Appendices

Appendix	1	NTRETN Map
Appendix	2	eSchool News, dated December 19, 2007
Appendix	3	Customer Service Rating for NTRETN
Appendix	4	Expense Summary NTRETN
Appendix	5	Typical Customer Communication
Appendix	6	NTRETN Contracts
Appendix	7	Preliminary Design and Estimate and Proposal
Appendix	8	2008 VTEC Agenda

NTRETN
PO Box 1894
Mt. Pleasant, Texas 75456

Attn: Tommy Turner

Re: Letter of Agency For Funding Year 2010 - 2011

This is to confirm our participation in the **Northeast Texas Regional Education Telecommunications Network** E-rate Consortium for the procurement of Internet access and internal connections. I hereby authorize **Northeast Texas Regional Education Telecommunications Network** to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Libraries Division of the Universal Service Administrative Company on behalf of the **Atlanta ISD**.

I understand that, in submitting these forms on our behalf, you are making certifications for **Atlanta ISD**. By signing this Letter of Agency, I make the following certifications:

- (a) I certify that schools in our district are all schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate as for-profit businesses and do not have endowments exceeding \$50 million.
- (b) I certify that our school district has secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.
- (c) I certify that our **school district** is covered by a technology plan(s) that is written, that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of service. The plan(s) is written at the following level(s): X an individual technology plan for using the services requested in this application; and/or ____ higher-level technology plan(s) for using the services requested in this application; or ____ no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.
- (d) I certify that the services the school, library or district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500(et seq.).
- (e) I certify that our school district has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.
- (f) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

- (g) I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.
- (h) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.
- (i) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.
- (j) I certify, on behalf of the entities covered by this Letter of Agency, that any funding requests for internal connections services, except basic maintenance services, applied for in the resulting FCC Form 471 application are not in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. § 54.506(c).
- (k) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.
- (l) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to **Northeast Texas Regional Education Telecommunications Network** for E-rate submission is true.

Name of Entity Atlanta ISD	Signature
Date	Name Roger Hailey
	Title Superintendent