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

November 19, 2010

Federal Communications Commission *Delivered via ECFS & email*
Attention: Ms. Gina Spade, Deputy Division Chief
Ms. Erica Myers, Wireline Competition Bureau
Ms. Dana Bradford, Wireline Competition Bureau

Telecommunications Access Policy Division
445 12th Street SW
Washington, DC 20554

Re:

Appeal
School District: Lake Pend Oreille School District, Bristol, PA
Funding Year: 2009
FRN Denied: 1818472
Form 471 Application Denied: 666055
Reason for Denial: Gifts and Communications

Dear Gina, Erica and Dana:

On November 3, 2010, Trillion filed a Master Appeal Summary with the FCC on ECFS, as well as provided the Master Appeal Summary to you via E-Mail and in hard copy. In the Master Appeal, Trillion provides the rational as to why USAC's mass denial of funding is without merit. Please accept this Individual appeal for the Lake Pend Oreille School District, along with the Master Appeal Summary, as well as the Appeal that will be filed by the applicant, as the appeal in its totality.

Gifts

USAC alleges that Lake Pend Oreille School District received valuable gifts which tainted a fair and open competitive bidding process as the basis for denial of funding. Trillion denies USAC's allegations. In fact and in all instances, the meals, gifts and gratuities that Trillion provided to the applicant were in full compliance with all applicable (FCC, state and local) competitive bidding and procurement requirements at the time. Please also note, in February of 2009, Trillion instituted a Code of Conduct for its employees that prohibits meals, gifts or gratuities of any kind and is stricter than the new rules put in place with the FCC Sixth Report and Order, FCC 10-175.

The amounts spent on meals or other routine business expenses were trivial and could not have possibly influenced a decision that would ultimately be made by the School Board. Furthermore, no member of the School Board or decision maker received any such expense. The fact is, Trillion invested $653,405 in order to construct the Lake Pend Oreille School District network

providing critical services with a total contract value of $1,999,427, while the amount of the routine business meals and expenses only amounted to $264.50 on average per year across the entire district.

Communications

USAC also alleges that communications between Lake Pend Oreille School District and Trillion prior to, and throughout, the competitive bidding process tainted a fair and open competitive bidding process, as the basis for the denial of funding. Trillion denies USAC's allegations. In fact and in all instances, the communications between both parties were in full compliance with all applicable (FCC, state and local) competitive bidding and procurement requirements at the time. Please note that in the denial of funding, USAC does not point to the specific communications that it found were not in compliance with applicable rules and regulations. However, Lake Pend Oreille School District did receive an "Intent to Deny" letter in which USAC details the specific communications that USAC said indicated their allegations. This appeal will refute USAC's allegations based upon the limited data in the denial letter, as well as the more detailed "Intent to Deny" Letter.

The FCDL denial and the "Intent to Deny" letter are attached for review in full. This appeal responds to each communication noted in the "Intent to Deny" letter with the rational as to why USAC's allegations are false.

USAC Alleged Communication Issue:

- The documentation also indicates that Jim Bangle (Lake Pend) engaged in meetings, e-mail discussions, and verbal discussions with Trillion employees beginning in May 2005 through the award of the five-year contract (with three five-year extensions) to Trillion in February 2006. Based on the documentation provided to USAC, these discussions do not appear to be general marketing discussions, but rather show that Lake Pend provided Trillion with inside information regarding its needs and details about their procurement process, that Trillion influenced the procurement process by providing input into Lake Pend's FCC Form 470 to ensure that Trillion would be awarded the contract. Also the documentation also shows that Lake Pend had already decided to select Trillion as its service provider even prior to the completion of the competitive bidding process.

Communication Was Within Rules:

After review of all of the data provided by Trillion and the data provided by the customer, Trillion is unsure about how this conclusion was reached by USAC. The facts do not result in the same conclusion as USAC's allegations.

First of all, no discussion occurred in regards to the actual procurement process the school district would use to select a vendor. Therefore, this application can not be denied based upon this allegation when no communication occurred between the school district and Trillion in regards to the procurement process.

Second, USAC alleges that Trillion provided input into the 470 specifications. In an e-mail that was provided to USAC by the applicant, the following was stated:

From: David White [mailto:david.white@trillion.net]
Sent: Wednesday, October 19, 2005 10:30 AM
To: Jim Bangle
Subject: RE: what's up?

Hi Jim,

If you have any questions about erate, from a legal standpoint, that is, feel free to call Scott Smyth at Trillion – 512-334-4100. He's not allowed help you to fill out the 470, but he can share his erate knowledge with you and answer any questions, and he's happy to do so for free! Let me know how I can help, too.

Hope you're feeling better!

David

David L. White
NW Regional Manager
www.trillion.net
425-246-7824 Direct

In this e-mail, the sales person for Trillion states that Trillion can not help the applicant fill out their Form 470. He also stated that Trillion's VP of Legal and Regulatory can share his E-Rate knowledge with the applicant. Trillion's VP of Legal and Regulatory was trained by USAC on what was allowable under E-Rate rules and could provide vendor neutral guidance and training, as well as point the applicant to existing published information on E-Rate. As a matter of fact, the actual 470 the school district posted is as follows:

9 ☐ **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 ○ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at **www.sd84.k12.id.us** or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

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

Whether you check YES or NO, you must list below the 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 ○ **Check this box if you prefer discounts on your bill.**	○ **Check this box if you prefer reimbursement after paying your bill in full.**	○ **Check this box if you do not have a preference.**

Service or Function:	Quantity and/or Capacity:
High Capacity Network	District Wide

As can be seen by this From 470, the applicant is looking for a "High Capacity Network: District Wide". There is no competitive advantage provided to Trillion by this description. Also, keep in mind that the e-mail record indicates that the incumbent was already providing a "High Capacity Network" to the school district and that incumbent had plans for improving and increasing capacity. In consultation with the applicant for this letter of appeal, Trillion is now aware that there were multiple bidders on this Form 470, and that Trillion was the lowest cost bidder.

USAC Alleged Communication Issue:

In addition to the lunch meetings and trips discussed above, starting in April and May of 2005, Kate Stetzner and Jim Bangle corresponded about the details of the current network and Internet connections from various providers, the establishing 470, and pricing. Trillion then provided a Lake Pend Design Map and Services proposal and followed up with meetings to discuss the proposal. The applicant then indicated that they would easily be able to select Trillion if the plan is right. By August, a final proposal was sent.

Communication Was Within Rules:

First, the email communication referred to above is referencing publicly available information. The actual e-mail is as follows:

From: Tari Pardini
Sent: Friday, May 27, 2005 11:18 AM
To: 'kate.stetzner@trillion.net'
Cc: Doug Olin; Jim Bangle
Subject: Questions & Answers

Kate -

Doug forwarded me your questions.

I have spoken with Jim (as he is traveling today) and here are the answers he provided:
1) current aggregate internet capacity: Aggregate for the District pipe to the Internet is 3mb. Each individual site is 1.5mb.
2) We do not have Verizon, we are with Intermax. The cost is currently $51,600 per year.
3) Yes, we absolutely need more capacity!
4) The one T-1 line is through Verizon and the cost is $680 per month.

I hope this provides you adequate information at this time. If not, please advise and I will seek additional information for you. If you have any other questions needing an immediate reply, please let me know. Otherwise, Jim will be back in the office on Tuesday, May 31 and he will be able to answer any questions you may have at that time.

Tari Pardini
District Assessment & School Office Coordinator
Lake Pend Oreille School District #84
tari.pardini@sd84.k12.id.us
208/263-5053, ext. 216; 208-255-8633 (cell)

As can be seen by this e-mail, the applicant provides Trillion data on their existing incumbent E-Rate service providers and the amounts that are being paid to each. The data provided is all public record. Using the school district's incumbent service provider as an example, the amount for Intermax Networks of $51,600.00 is directly available from USAC's own website, per below:

FRN: 1321712 **FCDL Date:** 03/01/2006	
10. Original FRN:	
11. Category of Service: Internet Access	**12. 470 Application Number:** 939720000537171
13. SPIN: 143027948	**14. Service Provider Name:** Intermax Networks, Inc.
15a. Non-Contracted tariffed/Month to Month Service:	**15b. Contract Number:** PO20503623
15c. Covered under State Master Contract:	**15d. FRN from Previous Year:**
16a. Billing Account Number: PO20503623	**16b. Multiple Billing Account Numbers?:**
17. Allowable Contract Date: 02/16/2005	**18. Contract Award Date:** 02/16/2005
19a. Service Start Date: 07/01/2005	**19b. Service End Date:**
20. Contract Expiration Date: 06/30/2006	
21. Attachment #: WIRELES 05 ITEM21	**22. Block 4 Worksheet No.:** 696137
23a. Monthly Charges: $4,300.00	**23b. Ineligible monthly amt.:** $.00
23c. Eligible monthly amt.: $4,300.00	**23d. Number of months of service:** 12
23e. Annual pre-discount amount for eligible recurring charges (23c x 23d): $51,600.00	
23f. Annual non-recurring (one-time) charges: 0	**23g. Ineligible non-recurring amt.:** 0
23h. Annual pre-discount amount for eligible non-recurring charges (23f - 23g): $0.00	
23i. Total program year pre-discount amount (23e + 23h): $51,600.00	
23j. % discount (from Block 4): 71	
23k. Funding Commitment Request (23i x 23j): $36,636.00	

This publicly available information directly from USAC's website is available for any potential bidder. Based on this information, there is no basis to deny this application.

Secondly, in regards to Trillion providing a "design map", as was discussed in the Master Appeal filed by Trillion with the FCC on November 3, 2010, a design map is simply part of Trillion's product offering which is allowable under E-Rate rules.

USAC Alleged Communication Issue:

Subsequent to the filing of the Form 470, Trillion and Lake Pend continued to meet and discuss items related to Lake Pend's Form 470 and Trillion's proposal. On December 3, 2005, Jim Bangle sent David White an email stating, "I'll be contacting you for assistance with the 470 not this week but next." David White responded and said, "We need to get the 470 in ASAP – the 471 window opened today!" On December 12, 2005, Jim Bangle sent Alan Larsen an email noting that he was trying to get Trillion online and explained that "[Trillion] flew Doug and I out to Colorado Springs and let us visit two school district who are using. We talked and worked with the districts' tech guys and got honest assessments of what's up and how it all works. They gave rave reviews like you wouldn't believe." On December 14, 2005, David White sent Jim Bangle an email

Communication Was Within Rules:

As was previously described, Trillion's salesperson clearly stated that Trillion could not help with filling out the Form 470. He also stated that Trillion's VP of Legal and Regulatory could provide neutral guidance/training. There is no indication in any other communication that Trillion provided input into the applicants Form 470. Actually to the contrary, in the email message below this paragraph, Trillion suggests to the applicant that they could get an E-Rate consultant to help them with their Form 470.

From: David White [david.white@trillion.net]
Sent: Wednesday, December 14, 2005 12:29 PM
To: Jim Bangle
Subject: Reschedule Trillion meeting
Importance: High

Hi Jim,

I went ahead a re-booked my flight for next Tuesday so that I can be at the district by 1:30. Let me know if that won't work for you, otherwise I'll plan to be there.

Sorry to cancel tomorrow, but you don't want these germs in your office anyway!

By the way, if you need help with your 470 you can contact www.erateconsulting.com and let them know that trillion referred you. They will take care of the entire process if you wish.

All the best,

David

David L. White
NW Regional Manager
Trillion
www.trillion.net
425-246-7824 Direct
512-334-4099 Fax

Our Values:
- *Integrity & Ethics*
- *Professionalism & Respect*
- *Customer Driven*
- *Having Fun!*

This is a further indication of the separation of the applicant and service provider in regards to the filing of their Form 470.

Regarding the visit to Colorado Springs, as stated above, the expense was within local and state guidelines. Additionally, a service provider is allowed to provide product demonstrations prior to the competitive bidding process, per USAC's guidelines. Visiting a customer who is utilizing a service provider's product offering is the most accurate way to demonstrate the viability of a product offering. This is especially relevant when the school district is in a very remote and mountainous area with an incumbent service provider that was providing bad service. There is no better product demonstration, than to see the product in action in a very similar environment.

USAC Alleged Communication Issue:

scheduling a meeting on December 20, 2005 and stating, "if you need help with your form 470 you can contact www.erateconsulting.com and let them know that trillion referred you. They will take care of the entire process if you wish." Also on December 14, 2005, Jim Bangle confirmed that he was working with ERC to complete the Form 470 and that he now needed "someone to help him tweak it." On Jim Bangle's December 17, 2005 To Do List, he noted "erate: 470 for Trillion!!!" On Jim Bangle's December 20, 2005 To Do List, he noted "erate: 471 for Trillion!!!." On December 21, 2005, Jim Bangle sent David White an email stating "Good news: Lisa thought the cost "was totally reasonable and justified . . . Your network as described so far is only for my WAN. It does NOT currently

Communication Was Within Rules:

In this section, it is re-iterated that the applicant should use an independent E-Rate consultant. The applicant appears to work with that E-Rate consultant. Therefore, how could Trillion have provided input into the applicant's Form 470, when the school district

hired an E-Rate consultant and there is no communication between Trillion and that E-Rate consultant regarding this applicant's Form 470?

Trillion can not comment on Mr. Bangle's To Do list, nor his intentions, however, Trillion is aware that Mr. Bangle had no decision making authority as it related to this project.

USAC Alleged Communication Issue:

include any costs associated with any internet connectivity, correct? Do I need to do a 470 for another company to be my internet connection, or do you do that, and it's factored into my cost?" On December 23, 2005, David White sent Lisa Hals (Lake Pend) an email noting that although the pole issue was important, that he would work "with Jim to get the proposal finished, and also to work out Internet access . . . More important is that we complete the 471 process first, and if that flies then we can begin the community work – does that sound OK with you?" On December 27, 2005, Jim Bangle provided David White with additional information about the district's Internet and filtering needs. On December 28, 2005, Trillion provided Lake Pend with a copy of its confidential services agreement to review. As noted above, on January 26, 2006, Trillion representatives had lunch with Lake Pend employees. The five-year contract, with three five-year extensions, was awarded to Trillion on February 3, 2006. (*See* Lake Pend.CB.Documents attachment.)

Communication Was Within Rules:

There are multiple items to be addressed in this communication. The applicants' first question is a valid inquiry of a potential service provider. Is internet included? This is simply a clarification of Trillion's bid. Also, the incumbent service provider to the district, which was a wireless ISP, provided both WAN and Internet under a bundled service. In evaluating proposals, where an incumbent would likely bid, an applicant must compare apples to apples. If a service provider was only offering WAN, the applicant would need to file a 470 for internet as well. In this case, the applicant would have separate prices for WAN and internet to compare against the bundled price of the incumbent. USAC failed to include the next line of the e-mail in their allegations, stating that the applicant actually prefers it bundled.

So, there is a point for which that I'm in need of clarification. Your network as described so far is only my WAN. It does NOT currently include any costs associated with any internet connectivity, correct? Do I need to do a 470 for another company to be my internet connection, or do you do that, and it's factored into my cost?
...a "duh" question that I've never asked as I've become accustomed to my WAN provider being my ISP – which I like.

Thanks for your time.

-Jim

The last line of this e-mail indicates that the incumbent provider provided a bundled offering which is preferred by the applicant.

The next item is an e-mail in which Trillion's salesperson indicates that he would work with "Jim" on the proposal. The actual e-mail is as follows:

From: David White [david.white@trillion.net]
Sent: Friday, December 23, 2005 12:13 PM
To: Lisa Hals
Cc: Jim Bangle
Subject: Trillion

Hi Lisa,

It was a real pleasure to meet with you on Tuesday, and thanks very much for taking so much time out of your day to learn about Trillion and the proposed solution!

I had wanted to get a copy of the contract to you, but our VP Legal went on vacation for Christmas and I don't want to send an older version just in case anything has changed. I think it's best to discuss it with him first and make sure I get the right document out to you – hope that's OK.

In the meantime I'm working with Jim to get the proposal finished, and also to work out Internet access. The community acceptance of poles is a question, I understand, but it is not necessary to get that answer right away. More important is that we complete the 471 process first, and if that flies then we can begin the community work – does that sound OK with you?

I look forward to talking with you again after the break.

Happy Christmas!

David

David L. White
NW Regional Manager
Trillion
www.trillion.net
425-246-7824 Direct
512-334-4099 Fax

This e-mail indicates a couple of things. First is that it appears that the meeting was the first time Trillion's salesperson met with Lisa Hals. Second, as in any bid process, with any service provider, a copy of the contract is always provided, as it is important to show standard terms, conditions, etc. in order for the district to evaluate the proposal.

The next line states that Trillion's salesperson will work with "Jim" to get the proposal completed. Jim is a common name. The referenced "Jim" could have been Jim Bangle who was "cc'd" on the e-mail and the salesperson may have needed more clarifying information from the school district in order to complete Trillion's proposal. The referenced "Jim" could also have been Jim Reed in Trillion's construction department who would actually have the responsibility as to where the poles would be placed. Community acceptance of "poles" is a key topic in this e-mail as Trillion points out that any details regarding the network poles, their acceptance by the community, and any permitting issues, would be addressed as part of the implementation process if Trillion were to win the bid. Either "Jim" referenced, there is nothing in this communication that violates the E-Rate rules.

As described in the Master Appeal filed on November 3, 2010, the communication between Lake Pend Oreille School District and Trillion was nothing more than industry standard communication, and general discussion of Trillion's product offering information, as allowed by the FCC rules and USAC training. No data provided in the relevant bid documents show any bias toward Trillion's product offering. In fact, the data contained in the bid documents show very open requirements that lend itself to a highly competitive bid process. In summary, this applicant's and Trillion's actions were in full compliance with FCC, state and local procurement guidelines in effect at the time, as described in the Master Appeal Summary. Therefore, neither the applicant's, nor Trillion's actions, improperly affected the competitive bidding process in any way whatsoever.

Trillion respectfully requests that this appeal be granted.

Sincerely,

Trillion Partners, Inc.

Attachments:

- Master Appeal Summary dated November 3, 2010 as previously filed on November 3, 2010 under ECFS Number 2010113403548
- Funding Decision Commitment Letter (FCDL)
- USAC "Intent to Deny" funding letter

Cc:
Ron Reich, Intel Capital
Peter Pitsch, Intel

FUNDING COMMITMENT REPORT
Service Provider Name: Trillion Partners, Inc
SPIN: 143025872
Funding Year: 2009

Name of Billed Entity: LAKE PEND OREILLE SCHOOL DISTRICT #84
Billed Entity Address: 901 TRIANGLE DRIVE
Billed Entity City: PONDERAY
Billed Entity State: ID
Billed Entity Zip Code: 83852
Billed Entity Number: 198474
Contact Person's Name: Lisa Hals
Preferred Mode of Contact: EMAIL
Contact Information: E-Rate@lposd.org
Form 471 Application Number: 666055
Funding Request Number: 1818465
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 203000000563675
Contract Number: NA
Billing Account Number: N/A
Service Start Date: 07/01/2009
Contract Expiration Date: 06/30/2013
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: $250,928.52
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $.00
Pre-Discount Amount: $250,928.52
Applicant's Discount Percentage Approved by SLD: 71%
Funding Commitment Decision: $.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: The FRN will be denied because you did not conduct a fair and open competitive bidding process. The documentation provided by you and/or the service provider indicates that the school district engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process which tainted the competitive bidding process. Trillion was consulted and/or offered details about services and products you were requesting on your FCC Form 470 and/or Request for Proposal (RFP). The competitive bidding process was influenced by Trillion when they assisted you in developing your services specifications for your FCC Form 470/or RFP. You failed to conduct a fair and open competitive bidding process free from conflicts of interest. This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open and therefore funding is denied.

FCDL Date: 09/29/2010
Wave Number: 068
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

FUNDING COMMITMENT REPORT
Service Provider Name: Trillion Partners, Inc
SPIN: 143025872
Funding Year: 2009

Name of Billed Entity: LAKE PEND OREILLE SCHOOL DISTRICT #84
Billed Entity Address: 901 TRIANGLE DRIVE
Billed Entity City: PONDERAY
Billed Entity State: ID
Billed Entity Zip Code: 83852
Billed Entity Number: 198474
Contact Person's Name: Lisa Hals
Preferred Mode of Contact: EMAIL
Contact Information: E-Rate@lposd.org
Form 471 Application Number: 666055
Funding Request Number: 1818472
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 203000000563675
Contract Number: NA
Billing Account Number: N/A
Service Start Date: 07/01/2009
Contract Expiration Date: 06/30/2013
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: $34,704.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $.00
Pre-Discount Amount: $34,704.00
Applicant's Discount Percentage Approved by SLD: 71%
Funding Commitment Decision: $.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: The FRN will be denied because you did not conduct a fair and open competitive bidding process. The documentation provided by you and/or the service provider indicates that the school district engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process which tainted the competitive bidding process. Trillion was consulted and/or offered details about services and products you were requesting on your FCC Form 470 and/or Request for Proposal (RFP). The competitive bidding process was influenced by Trillion when they assisted you in developing your services specifications for your FCC Form 470/or RFP. You failed to conduct a fair and open competitive bidding process free from conflicts of interest. This FRN is denied because the documents provided by you and/or your vendor indicates that there was not a fair and open competitive bid process free from conflicts of interest. The documentation provided by you and/or your service provider indicates that prior to/throughout your contractual relationship with the service provider listed on the FRN, that you were offered and accepted either gifts, meals, gratuities, entertainment from the service provider, which resulted in a competitive process that was no longer fair and open and therefore funding is denied.

FCDL Date: 09/29/2010
Wave Number: 068
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

Date: June 4, 2010

Lisa Hals
Lake Pend Oreille School District
(208) 263-5053 x210
Application Number(s): 666055, 736611

Response Due Date: June 21, 2010

Dear Ms. Hals:

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

Funding Year 2009 Application 666055, FRNs 1818472, 1818465 and Funding Year 2010 Application 736611, FRNs 1990460, 2019726 will be denied for the following reasons:

Based on the documentation that has been provided to USAC, the entire Funding Request Numbers (FRNs) 1818472, 1818465, 1990460, and 2019726 will be denied because Lake Pend Oreille School District (Lake Pend) did not conduct a fair and open competitive bidding process. The Form 470 (No. 203000000563675) associated with these FRNs was posted on December 16, 2005 and the Contract Award Date was February 3, 2006.

- The documentation provided indicates that Jim Bangle (Lake Pend) and Doug Olin (Lake Pend) accepted meals, as well as a paid trip to Trillion's Open House in Canon City, Colorado, from Trillion prior to and during the process Lake Pend conducted to select a service provider to provide the goods and services that were included in the posted Form 470. Specifically, Trillion has provided documentation for the following meals and trips that were accepted and attended by Lake Pend employees:
    - On May 5, 2005, Kate Stetzner (Trillion) invited Jim Bangle (Lake Pend) to attend Trillion's Open House in Canon City, Colorado on May 19-20, 2005. According to your response, Jim Bangle and Doug Olin (Lake Pend) traveled to Canon City, Colorado and you confirmed that Trillion paid for Jim Bangle's and Doug Olin's expenses, including: rental car, air fare, meals, and hotel accommodations for the trip. On May 19, 2005, Jim Bangle and Doug Olin had lunch with Trillion representatives. According to Trillion documentation, the cost of the meal was $48.53 ($16.17/person).
    - On October 4, 2005, Trillion and Lake Pend employees had lunch. The receipt states the cost was $45.00 ($15.00/person).
    - On January 26, 2006, according to Trillion documentation, Lake Pend employees and Trillion representatives had lunch. The cost of this lunch was $37.29 ($12.43/person).

  Jim Bangle's and Doug Olin's expenses for their trip to Colorado in May 2005 and the meals' values exceed the federal gifts standards of $20/person/occasion not to exceed $50/person/per calendar year. These trips and meals occurred in the months prior to Lake Pend's posting of its Form 470 (Application No.

include any costs associated with any internet connectivity, correct? Do I need to do a 470 for another company to be my internet connection, or do you do that, and it's factored into my cost?" On December 23, 2005, David White sent Lisa Hals (Lake Pend) an email noting that although the pole issue was important, that he would work "with Jim to get the proposal finished, and also to work out Internet access . . . More important is that we complete the 471 process first, and if that flies then we can begin the community work – does that sound OK with you?" On December 27, 2005, Jim Bangle provided David White with additional information about the district's Internet and filtering needs. On December 28, 2005, Trillion provided Lake Pend with a copy of its confidential services agreement to review. As noted above, on January 26, 2006, Trillion representatives had lunch with Lake Pend employees. The five-year contract, with three five-year extensions, was awarded to Trillion on February 3, 2006. (*See* Lake Pend.CB.Documents attachment.)

FCC rules require applicants to conduct a fair and open competitive bidding process free from conflicts of interest. *See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, Order, 19 FCC Rcd 6858, ¶ 60 (2003) (*"Ysleta Order"*); *See also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028-4032-33, ¶ 10 (2000); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 07-1270 (2007); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-449 (2008)(Caldwell Parish). Applicants cannot reveal to one prospective service provider information they do not provide to all. *See* Caldwell Parish, ¶ 16. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

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

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

- The email exchanges described in detail above, suggest it was pre-determined that Lake Pend would enter into a contract with Trillion prior to the Form 470 being posted and prior to the 28 competitive bidding window. For example, Jim Bangle's December 20, 2005 To Do List noted that he needed to prepare the "471 for Trillion," and is dated the day after Lake Pend posted its Form 470. These emails also suggest that Trillion was intimately involved in developing the specifications you would seek on your Form 470 and perhaps was involved in the drafting of the language to be used in the Form 470. Please review these emails and explain in detail why these discussions took place prior to the submission of the Form 470. Please indicate if Trillion was involved in the development of the

203000000563675) on December 16, 2005 and subsequent award of the contract to Trillion on February 3, 2006. The January 26, 2006 meal occurred during the competitive bidding period. Based on a pattern of gifts received throughout the year the entire competitive bidding process is deemed tainted. Based on this information, it appears that you did not conduct a fair and open competitive process, free from outside influence. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx. (Copies of the expense reports and receipts are attached as Lake Pend.Meals.Trips.)

- The documentation also indicates that Jim Bangle (Lake Pend) engaged in meetings, e-mail discussions, and verbal discussions with Trillion employees beginning in May 2005 through the award of the five-year contract (with three five-year extensions) to Trillion in February 2006. Based on the documentation provided to USAC, these discussions do not appear to be general marketing discussions, but rather show that Lake Pend provided Trillion with inside information regarding its needs and details about their procurement process, that Trillion influenced the procurement process by providing input into Lake Pend's FCC Form 470 to ensure that Trillion would be awarded the contract. Also the documentation also shows that Lake Pend had already decided to select Trillion as its service provider even prior to the completion of the competitive bidding process.

  In addition to the lunch meetings and trips discussed above, starting in April and May of 2005, Kate Stetzner and Jim Bangle corresponded about the details of the current network and Internet connections from various providers, the establishing 470, and pricing. Trillion then provided a Lake Pend Design Map and Services proposal and followed up with meetings to discuss the proposal. The applicant then indicated that they would easily be able to select Trillion if the plan is right. By August, a final proposal was sent.

  Subsequent to the filing of the Form 470, Trillion and Lake Pend continued to meet and discuss items related to Lake Pend's Form 470 and Trillion's proposal. On December 3, 2005, Jim Bangle sent David White an email stating, "I'll be contacting you for assistance with the 470 not this week but next." David White responded and said, "We need to get the 470 in ASAP – the 471 window opened today!" On December 12, 2005, Jim Bangle sent Alan Larsen an email noting that he was trying to get Trillion online and explained that "[Trillion] flew Doug and I out to Colorado Springs and let us visit two school district who are using. We talked and worked with the districts' tech guys and got honest assessments of what's up and how it all works. They gave rave reviews like you wouldn't believe." On December 14, 2005, David White sent Jim Bangle an email scheduling a meeting on December 20, 2005 and stating, "if you need help with your form 470 you can contact www.erateconsulting.com and let them know that trillion referred you. They will take care of the entire process if you wish." Also on December 14, 2005, Jim Bangle confirmed that he was working with ERC to complete the Form 470 and that he now needed "someone to help him tweak it." On Jim Bangle's December 17, 2005 To Do List, he noted "erate: 470 for Trillion!!!" On Jim Bangle's December 20, 2005 To Do List, he noted "erate: 471 for Trillion!!!." On December 21, 2005, Jim Bangle sent David White an email stating "Good news: Lisa thought the cost "was totally reasonable and justified . . . Your network as described so far is only for my WAN. It does NOT currently

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.

- You did not reference in your response or in the attached exhibits any of the meals that Trillion provided to Lake Pend employees from May 2005 through January 2006. However, Trillion provided documentation for some of these meals, please explain the discrepancy in your response.

- You have indicated in your response, "[Lake Pend] did not use or hire an e-rate consultant. Trillion Partners provided technical guidance to our IT Director, Jim Bangle." In several of the emails noted above, Jim Bangle contacted eRate Consulting Services, LLC for help with preparing the Form 470. Please provide information about your relationship with ERC and whether ERC provided any other consulting services to the Lake Pend. Did anyone associated with eRate Consulting Services, LLC introduce you to the service provider Trillion Partners, Inc.? Did anyone associated with eRate Consulting Services, LLC select the vendor for the services requested in the FRNs listed above? Did anyone associated with eRate Consulting Services, LLC encourage you to select Trillion Partners, Inc. as your service provider? Please also explain how Lake Pend's reliance on Trillion for guidance regarding the E-Rate program does not violate program rules that prohibit service providers from assisting applicants in preparing program forms that require the applicant's certification, such as the Form 470.

- You indicated in your response that Sean Cronin (Lake Pend) was invited and attended Trillion's annual VTEC conference on June 23-25, 2008, in Austin, Texas. You provided information regarding about $90 in meals; $20 for USB thumb drives; $679.00 for air fare and $17 for airport shuttle. Trillion provided documentation regarding the costs of this conference that shows: $227.20 for hotel accommodations; $25.00 for "cool mesh shirts" and dinner at Guero's Taco Bar total cost was $412.70 ($27.51). The total cost of Mr. Cronin's expenses for this trip was approximately $1,060 (based on the information provided). Please explain how acceptance of this expense-paid trip by Trillion does not violate program rules and did not influence Lake Pend's decision to select Trillion as its service provider. (Copies of the relevant receipts and documentation are attached as Lake Pend.VTEC documentation.)

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 and we will perform the denials described at the beginning of this letter.

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.

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