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: Charlton County School System, Bristol, PA
Funding Year: 2010
FRN Denied: 2023445
Form 471 Application Denied: 742443
Reason for Denial: 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 Charlton County School System, along with the Master Appeal Summary, as well as the Appeal that will be filed by the applicant, as the appeal in its totality.

USAC alleges that communications between Charlton County School System 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, Charlton County School System 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:

“Based on the documentation provided by Trillion Partners, Charlton County School System did not conduct an open and fair competitive bidding process. 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. The applicant 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. "Open" means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them. In an email dated October 27, 2008, Dr. Slater sent a draft copy of the Form 470 (75750000691055) to Ms. Jennifer Carter, Trillion Partners, to review to ensure that Charlton County School System was requesting the services Trillion Partners provides. Dr. Slater writes, “Look this over and make sure I have this correct, thanks.” Ms. Carter responded, “Looks fine, Sandy.””

Communication Was Within Rules:

First, it should be noted that Charlton County School System had been a Trillion customer since March of 2006 when Trillion acquired the Charlton contract from another company. Trillion was an incumbent service provider for this school district for over two years prior to the communication USAC points to.

Second, Trillion’s E-Rate specialist has received USAC training every year while employed by Trillion. USAC specifically trains to provide vendor neutral guidance if the school district should ask for E-Rate help.

Third, Trillion filed with the FCC on November 3, 2010 a Master Appeal. In this Master Appeal, Trillion described the rules allowable in regards to a service provider providing vendor neutral guidance to an applicant. The service provider can not provide guidance that provides an unfair competitive advantage.

In USAC’s allegation, they point to the specific Form 470 #757500000691055 that was filed on October 29, 2008. The following is the telecommunications services requested by the applicant on the 470:

Service or Function:	Quantity and/or Capacity:
T1/T3 Lines	6 locations
Centrex Lines T1/T3 Lines	250 lines
Centrex Common Equipment	6 locations
Long Distance Service	6 locations
Cellular Services	6 locations, 15 lines
Fax Machine Lines	6 locations
Digital Transmission Services	6 locations
Asynchronous Transfer Mode ATM	6 locations
Gigabit Fiber Services	6 locations
Wireless WAN	6 locations
Wide Area Network Services	6 locations
Direct Inward Dialing	6 locations
SMDS	6 locations
POTS	6 locations
Trunks	6 locations
Distance Learning Circuits	6 locations
Inside Wire Maintenance Plans	6 locations
Directory Assistance Charges	6 locations
Interactive Television	6 locations
911/E911 Lines	6 locations
Alarm Telephone Lines	6 locations
Conferencing Services	6 locations
PVCs	6 locations
Permanent Virtual Circuit	6 locations
PIC Change Charge	6 locations
Video Conferencing Services	6 locations
Design & Engineering	6 locations
Installation	6 locations
Maintenance & Technical Support	6 locations
Project Management	6 locations
Training	6 locations
Wide Area Network Services	6 locations
Wireless Wide Area Network	6 locations
Integrated Services Digital Network(PRI)	6 locations
Local phone lines	6 locations

In discussion with the school district in preparation for this appeal, Trillion now understands that the school district had filed this Form 470 for the continuation of services under current live contracts with all of its existing service providers, including Trillion. It appears that the normal practice of the school district is to file a Form 470 annually for all services, and the Form 470 from year to year has basically the same requested eligible services.

Therefore, it is clear that the school district drafted the Form 470, as indicated in the communication. Trillion did not provide any communication that modified the applicant drafted Form 470. There is also nothing on this 470 that provides an unfair advantage to Trillion. Trillion is only capable of providing 8 of the 35 services listed on the customer's Form 470. For the services Trillion could offer to Charlton, which would include Wide Area Network services, wireless WAN, and gigabit fiber services, there is nothing in these requirements that provide Trillion a competitive advantage.

As further support that Trillion had no influence in Charlton's drafting of their Form 470, the majority of the wording in the Form 470 is directly from the Eligible Services list and for services the school district was already receiving from many service providers. In fact,

the related Form 471 (#658765) resulted in ten vendors being filed for on the Form 471 that included:

- AT&T
- Windstream
- AllTel
- Network Technology Consulting
- Network Service Consultants
- XETA Technologies
- Centrifuge Solutions
- Gaggle.net
- Gov Connection
- Trillion Partners

USAC Alleged Communication Issue:

"On October 28, 2008, Mr. Chuck Browning, Trillion Partners, sent Dr. Slater an email thanking her for the opportunity to present Trillion's upgrade proposal on Wednesday (October 22, 2008)."

Communication Was Within Rules:

Trillion provided this "upgrade proposal" as an attachment to the letter to Mel Blackwell dated June 8, 2009. This was an inadvertent use of the word proposal and was not a proposal at all, but merely a communication of Trillion's product offering including information on an upgrade of equipment to deliver greater bandwidth. The Preliminary Design & Good Faith Estimate included the following language:

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

The discussion with the school district was regarding the potential to upgrade existing bandwidth and equipment. This is purely product offering discussion as is allowable under the rules of the program.

USAC Alleged Communication Issue:

"Dr. Slater responded to the email, advising Mr. Browning to prepare his pricing and that she would be posting the Form 470 that same day."

Communication Was Within Rules:

No advantage was provided to Trillion as Trillion did not have all of the data needed to prepare pricing until after November 11, 2008 which is two weeks after the Form 470 was posted as noted in several e-mail communications.

USAC Alleged Communication Issue:

"The Form 470 (75750000691055) was later posted to USAC's website October 29, 2008. Further you sent an email to Ms. Cater and Mr. Chuck Browning on October 31, 2008, stating "I am not suppose to even talk to you all until I have filed the 470 form. I know what I am suppose to do and it is done"

Communication Was Within Rules:

The actual e-mail string is as follows:

"From: Chuck Browning
Sent: Friday, October 31, 2008 2:44 PM
To: 'sslater@charlton.k12.ga.us'
Cc: Jennifer Carter; Renee Hahn; David Jolly
Subject: Charlton CSD
Sandy,
I wanted to let you know how sorry I am about the confusion. Please feel free to contact me if you have any questions or if I can help you in any way.
Regards,
Chuck
Chuck Browning
Client Relations Manager
Trillion Partners
www.trillion.net
512.684.1135
512.569.1042 Mobile
512.334.4099 Fax
Our Values:
- Integrity & Ethics
- Professionalism & Respect
- Customer Driven
- Having Fun

From: Sandy Slater [sslater@charlton.k12.ga.us]
Sent: Friday, October 31, 2008 2:55 PM
To: Jennifer Carter; Chuck Browning
Subject: Erate
I am not suppose to even talk to you all until I have filed the 470 form. I know what I am suppose to
do and it is done. If I missed anything on the original form then and only then do I need to file
another form. Please check with Mr. Smyph if you are not sure about our contract.
--
Sandy Slater, Ed.D.
Technology Director

Charlton County School System
500 S. Third Street
Folkston, GA 31537
912.496.2596 Ext 2010
912.496.2595 FAX"

Trillion had an internal debate that took place after the 470 was posted and then this debate was verbally conveyed to Ms. Slater. Trillion thought that the existing contract allowed for Trillion to provide higher bandwidth and equipment replacement with a simple contract upgrade and extension under the previous Form 470 that had been filed. After further review, and after the verbal conversation, Trillion determined that this was not possible under E-Rate rules since the contract nor the original Form 470 allowed for extensions. This was the confusion that Trillion had to apologize for and elicited the response from Charlton. What the applicant is telling Trillion is that the Form 470 is posted (2 days prior), that she knows what she is doing, and that if the salesperson does not understand their own contract that the salesperson should contact their own attorney, Mr. Smyth.

USAC Alleged Communication Issue:

"The competitive bid process was no longer fair nor open when Charlton County School System provided Trillion Partners an advance review of the Form 470. In addition, when Dr. Slater accepted Mr. Browning proposal and advised him to prepare pricing in anticipation of the Form 470 posting."

Communication Was Within Rules:

Per the detailed responses provided above, Trillion disagrees. The applicant sought neutral guidance on their Form 470 from their existing vendor. The Form 470 requested a variety of services, the majority of which were services Trillion did not even offer. The services requested by the applicant that were offered by Trillion were open and allowed for the potential of a great deal of competition. Trillion did not modify the customer drafted Form 470. Any guidance that potentially was provided was therefore vendor neutral. The e-mail records show that Trillion did not have the data required to provide a bid until at least two weeks after the Form 470 had been filed. Trillion was one of ten vendors filed on their Form 470. Trillion was only awarded contracts for services Trillion was already under contract with Charlton County School System for. The E-Mail record also shows that the selection process was not completed until late January, therefore all potential bidders had a total of up to three months to provide a proposal, which is well beyond the 28 day required period. Trillion's own proposal wasn't delivered until 41 days after the Form 470 was filed.

As described in the Master Appeal filed on November 3, 2010, the communication between Charlton County School System 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: 2010

Name of Billed Entity: CHARLTON COUNTY SCHOOL SYSTEM
Billed Entity Address: 1259 THIRD. STREET
Billed Entity City: FOLKSTON
Billed Entity State: GA
Billed Entity Zip Code: 31537-3710
Billed Entity Number: 127480
Contact Person's Name: Dr. Sandy Slater
Preferred Mode of Contact: EMAIL
Contact Information: sslater@charlton.k12.ga.us
Form 471 Application Number: 742443
Funding Request Number: 2023445
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 757500000691055
Contract Number: N/A
Billing Account Number: N/A
Service Start Date: 07/01/2010
Contract Expiration Date: 06/30/2019
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: $67,502.88
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: $.00
Pre-Discount Amount: $67,502.88
Applicant's Discount Percentage Approved by SLD: 90%
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.

FCDL Date: 09/28/2010
Wave Number: 019
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

Date: June 4, 2010

Dr. Sandy Slater
Charlton County School System
Application Number(s): 658765,742443

Response Due Date: June 21, 2010

We are in the process of reviewing Funding Year 2009, and 2010 Form(s) 471 to ensure that they are in compliance with the rules of the Universal Service program. FY 2009 application 658765 FRNs 1842292 and 1842340 and FY 2010 application 742443 FRN 2023430 and 2023445 will be denied for the following reasons:

1. Based on the documentation provided by Trillion Partners, Charlton County School System did not conduct an open and fair competitive bidding process. 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. The applicant 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. "Open" means there are no secrets in the process – such as information shared with one bidder but not with others – and that all bidders know what is required of them. In an email dated October 27, 2008, Dr. Slater sent a draft copy of the Form 470 (75750000691055) to Ms. Jennifer Carter, Trillion Partners, to review to ensure that Charlton County School System was requesting the services Trillion Partners provides. Dr. Slater writes, "Look this over and make sure I have this correct, thanks." Ms. Carter responded, "Looks fine, Sandy." (see enclosed email subject: Re: *470 Erate* dated October 27, 2008) On October 28, 2008, Mr. Chuck Browning, Trillion Partners, sent Dr. Slater an email thanking her for the opportunity to present Trillion's upgrade proposal on Wednesday (October 22, 2008). Dr. Slater responded to the email, advising Mr. Browning to prepare his pricing and that she would be posting the Form 470 that same day. (see enclosed email subject: Charlton CSD Visit dated October 28, 2008). The Form 470 (75750000691055) was later posted to USAC's website October 29, 2008. Further you sent an email to Ms. Cater and Mr. Chuck Browning on October 31, 2008, stating "I am not suppose to even talk to you all until I have filed the 470 form. I know what I am suppose to do and it is done. …" (see enclosed email subject: *Erate* dated October 31, 2008). The competitive bid process was no longer fair nor open when Charlton County School System provided Trillion Partners an advance review of the Form 470. In addition, when Dr. Slater accepted Mr. Browning proposal and advised him to prepare pricing in anticipation of the Form 470 posting. If you disagree with our determinations, and you have alternative information, please provide the supporting documentation.

2. Based on the documentation that you have provided, the entire FRNs will be denied because you did not conduct a fair and open competitive bid process free from conflicts of interest. On October 28, 2008, Mr. Chuck Browning, Trillion Partners, sent Dr. Slater an email thanking her for the opportunity to present Trillion's upgrade proposal on Wednesday (October 22, 2008). (see enclosed email subject: Charlton CSD Visit dated October 28, 2008). Mr. Browning had lunch with Dr. Slater on that day. Dr. Slater had several business lunches and dinners with Trillion Partner representatives prior to the competitive bidding process. (see enclosed Expense Summary). The documentation Trillion Partners provided indicates that you were offered and accepted meals immediately prior to and/or during the process you conducted to select a service to provide these goods and services from the service provider you selected. These meals show

that you engaged in non-competitive bidding practices in violation of program rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx.

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

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