FUNDING COMMITMENT REPORT

illed Entity Name: Northeast Texas Regional Education Telecommunications Network (N
BEN: 150217
Funding Year: 2009

Comment on RAL corrections: EDUCATION SERVICE CENTER - REGION 8 has been added to Block 4, Worksheet # 1083523, of the Form 471 application at the request of the applicant.

Form 471 Application Number: 669497
Funding Request Number: 1875591
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 829880000573553
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: N/A
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: N/A
Contract Award Date: 02/16/2006
Contract Expiration Date: 06/30/2011
Site Identifier: 140618
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: $8,667.36
Annual Pre-discount Amount for Eligible Non-recurring Charges: $.00
Pre-discount Amount: $8,667.36
Discount Percentage Approved by the USAC: 70%
Funding Commitment Decision: $0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: <><><><><> 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: 10/06/2010
Wave Number: 069
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

USAC

Schools and Libraries Division
Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

TIME SENSITIVE MATERIAL

00001
David Mabe
Northeast Texas Regional Education Telecommunications M
2230 N. Edwards
Mt. Pleasant, TX 75456

EXHIBIT 2

KELLEY DRYE & WARREN LLP
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July 30, 2010

VIA OVERNIGHT DELIVERY

Ms. Pina Portanova
Universal Service Administrative Company
School and Libraries Division
30 Lanidex Plaza West
P. O. Box 685
Parsippany, NJ 07054-0685

Dear Ms. Portanova:

I am writing in response to your June 4, 2010 letter to David Mabe ("Mr. Mabe"), former Deputy Executive Director of the Region VIII Educational Service Center ("Region VIII ESC"), and the Northeast Texas Regional Education Telecommunications Network ("Northeast" or "Applicant"), regarding Northeast's schools and libraries universal support mechanism (or "E-rate") funding.[1] In your June 4, 2010 letter, you state that the Universal Service Administrative Company ("USAC") is "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." Your letter identifies two specific concerns based on the documentation provided thus far to USAC: (1) whether Mr. Mabe accepted gifts from the service provider, Trillion Partners, Inc. ("Trillion" or "Service Provider"), that created a conflict of interest; and (2) whether Mr. Mabe failed to maintain an arms-length relationship with Trillion during the competitive bidding process. You indicate that Northeast's funding requests for Fiscal Years 2006, 2007 and 2008 may be reduced or rescinded without additional information from Northeast.

You request that Northeast "provide complete responses and documentation to the questions listed...." This letter provides the requested information in support of Northeast's E-

[1] Letter from Pina Portanova, Universal Service Administrative Company ("USAC") – Schools and Libraries Division, to David Mabe, Director – Northeast Texas Regional Education Telecommunications Network (June 4, 2010), attached hereto as Exhibit A ("June 4, 2010 letter").

Rate funding requests. This information, along with information previously provided to USAC,[2] demonstrates that Northeast engaged in a fair and open competitive bidding process that was free from conflicts of interest and in compliance with all applicable Federal Communications Commission ("Commission" or "FCC") rules.[3] Therefore, Northeast's outstanding funding requests should be approved by USAC.[4]

I. BACKGROUND

A. Northeast Texas Regional Education Telecommunications Network

Northeast is a consortium of 51 public non-profit school districts located primarily in northeast Texas. The school districts that comprise Northeast cover more than 5,000 square miles of Texas and serve more than 150 schools and 150,000 students.[5] The consortium comprises small, primarily rural school districts that lacked the resources on their own to deploy high-bandwidth broadband internet for educational purposes.[6] During the relevant time, Northeast's member school districts ranged in size from the Marietta Independent School District ("Marietta ISD") with approximately 46 students to the Mount Pleasant Independent School District, with approximately 4,539 students.[7] The majority of the consortium's school districts

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2 On June 18, 2009 Mr. Mabe on behalf of Northeast submitted additional information to USAC regarding a review of Northeast. *See* Email from David Mabe, Deputy Executive Director, Region VIII Education Service Center, to Barbara Cannon, USAC (June 18, 2009). On July 29, 2009, Barbara Cannon ("Ms. Cannon") on behalf of USAC requested additional information from Mr. Mabe and Northeast. *See* Email from Barbara Cannon, USAC, to David Mabe, Deputy Executive Director, Region VIII Education Service Center (July 28, 2009). On August 10, 2009 Mr. Mabe submitted additional information responding to Ms. Cannon's inquiries. *See* Email from David Mabe, Deputy Executive Director, Region VIII Education Service Center, to Barbara Cannon, USAC (Aug. 10, 2009).

3 USAC is bound by FCC rules and precedent. *See* 47 C.F.R. § 54.723.

4 The following E-rate applications are pending as Northeast has yet to receive a USAC Funding Commitment Decision Letter ("FCDL") for FY 2009 (FRNs 1837107, 1837122, 1837122, 1837138, 1875545, 1875591) and for FY 2010 (FRN 2043353).

5 "Wireless WAN creates new learning opportunities: Northeast Texas consortium boosts bandwidth to its 51 member school districts, saving money and enabling applications such as distance education and video on demand," *eSchool News* (Dec. 19, 2007), *available at* http://www.eschoolnews.com/2007/12/19/wireless-wan-creates-new-learning-opportunities/ (last visited July 14, 2010).

6 *See* Declaration of Tommy Long, former Board Member, Northeast Texas Regional Education Telecommunications Network ¶6, attached hereto as Exhibit B. In addition, the Region VIII ESC is a member of the consortium. *Id.*

7 *See* U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, School District Demographics System, Texas, *available at*

receive support for half or more of their students through the National School Lunch Program, which is designed to aid low income students.

The consortium's mission is to "plan, coordinate and facilitate the cooperative development and operation of a regional integrated telecommunications network...to contribute to improved student learning and the overall educational development of the region...."[8] Northeast was constituted on April 14, 1997, initially composed of 47 school districts.[9] Northeast is governed by a 12 member Board of Directors ("the Board"), which consists of member school district superintendents.[10]

Before Northeast received USAC funding, T1 links connected member school districts and provided a total bandwidth to the Internet of 1.54 Mbps for the entire Region VIII district.[11] However, there were two significant limitations with the existing network. First, the T1 lines did not supply the consortium's member school districts with enough bandwidth. Second, the network was cost prohibitive because the network's single point of presence ("POP") was located in Longview, Texas. Many of the consortium's school districts are located in the Dallas, Texas Local Access and Transport Area ("LATA"), which resulted in high charges to SBC Communications, Inc. ("SBC") (now AT&T) to transmit data across the LATA boundaries.[12]

In 2004, the Board made the decision to upgrade its network with a wireless wide area network ("WAN") after meeting with several providers and learning that it could more efficiently receive wireless access to broadband infrastructure.[13] On December 12, 2003, Northeast filed and certified with USAC an FCC Form 470, *Description of Services Requested*

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http://nces.ed.gov/ (last visited July 14, 2010)(based on 2000 U.S. census data); *see also*, Long Dec. ¶7. Please note that in 2009 Marietta ISD was consolidated with the Pewitt Independent School District.

8 *See* Long Dec. ¶4; *see* Northeast Texas Regional Education Telecommunications Network Webpage, "Origins, Vision, Mission," *available at* http://www.esc8.net/aboutus.htm (last visited July 14, 2010).

9 Long Dec. ¶¶3-4.

10 *Id.* ¶4.

11 *See* Declaration of David Mabe, former Deputy Executive Director, Region VIII Educational Service Center ¶7, attached hereto as Exhibit C ("Mabe Dec.").

12 *Id.* ¶7.

13 Long Dec. ¶9; Mabe Dec. ¶8.

and Certification Form ("Form 470"), requesting bids for a wireless WAN.[14] Northeast was awarded federal E-rate funding for a point-to-point wireless WAN connecting member-school districts – becoming the first consortium in Texas to implement such a network.[15] Northeast contracted with Trillion, which constructed a wireless WAN that now consists of over 80 communications towers and three POPs throughout the member school districts. As a result of this funding, *each* district in the consortium now receives a total bandwidth connection of 10 to 100 Mbps – compared to 1.54 Mbps before the network[16] – and 335 MB of total bandwidth.[17] Individual schools now have a minimum bandwidth of at least 28 Mbps.[18] The network enables member-school districts to deliver high-quality voice and video content to students for their educational benefit. Students in some of the most rural districts in Texas are now able to take advantage of web-based information systems, distance learning programs and virtual field trips, which they otherwise would not be able to utilize but for E-rate discounts. The network also enables video conferencing, saving the school districts time and money.[19]

B. E-Rate Bidding and Funding History

From Funding Years ("FYs") 2004 to 2010 Northeast applied for E-rate funding from USAC, receiving E-rate commitments for FY 2004 to 2008.[20] For FY 2004, Northeast's

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14 FCC Form 470 for Northeast, Application Number 381790000479262 (FRNs 1150140, 1156522).

15 *Id.*; *see also* "Wireless WAN creates new learning opportunities: Northeast Texas consortium boosts bandwidth to its 51 member school districts, saving money and enabling applications such as distance education and video on demand," *eSchool News* (Dec. 19, 2007), *available at* http://www.eschoolnews.com/2007/12/19/wireless-wan-creates-new -learning-opportunities/ (last visited July 14, 2010).

16 "Wireless WAN creates new learning opportunities: Northeast Texas consortium boosts bandwidth to its 51 member school districts, saving money and enabling applications such as distance education and video on demand," *eSchool News* (Dec. 19, 2007), *available at* http://www.eschoolnews.com/2007/12/19/wireless-wan-creates-new -learning-opportunities/ (last visited July 14, 2010).

17 Mabe Dec. ¶37.

18 Christopher Null, "No-Nonsense Networking: Connecting dozens of schools in a high-speed network while on a budget is no small feat," *District Administration* (July 2006), *available at* http://www.district administration.com/viewarticlepf.aspx?articleid=392 (last visited July 14, 2010).

19 "Wireless WAN creates new learning opportunities: Northeast Texas consortium boosts bandwidth to its 51 member school districts, saving money and enabling applications such as distance education and video on demand," *eSchool News* (Dec. 19, 2007), *available at* http://www.eschoolnews.com/2007/12/19/wireless-wan-creates-new -learning-opportunities/ (last visited July 14, 2010).

20 Commitments have yet to be awarded to Northeast for FYs 2009 and 2010.

member school districts and their technology coordinators developed technology plans, working closely with the Board.[21] Based on their technology plans, Northeast and its E-rate consultant Jennifer Duncan prepared and submitted to USAC an FY 2004 Form 470 for, which was posted on USAC's website on December 10, 2003. On Form 470, Items 8 and 9, Northeast requested for 45 school districts and the Region VIII Education Service Center: (1) telecommunications services, including internet access, wireless WAN, as well as maintenance services on the wireless WAN, WAN, and digital transmission; and (2) internet access, including wireless WAN, maintenance services on wireless WAN and WAN. Northeast indicated on Form 470, Item 13, that it sought a multi-year contract, summarizing plans to purchase additional services in future years. Northeast maintained open bidding for the requisite 28 days – from posting on December 10, 2003 to January 7, 2004. During this time, Northeast received inquiries from Trillion and SBC.[22] However, Northeast only received one bid – from Trillion – which the Board reviewed. The Board evaluated Trillion's bid, primarily based on the contract price, which was initially too high but subsequently negotiated down.[23]

On January 21, 2004, after the bidding period had closed, the Board signed a five year contract with Trillion, set to expire on June 30, 2010, for telecommunications and internet services outlined in the Form 470. Under the contract, Trillion owns all network equipment and Northeast purchases Priority 1 services from Trillion.[24] Under the contract, the cost to receive broadband internet speeds was only 7-10% higher than under the previous T1 network.[25] On February 3, 2004, Northeast submitted an FCC Form 471, *Service Ordered and Certification Form* ("Form 471"),[26] to USAC, informing USAC of the contract with Trillion. Specifically, Northeast requested $1,067,999.62 for FRN 1150140 and $13,556.42 for FRN 1156522. USAC approved these FRNs.

In subsequent FY 2005-2010, Northeast submitted for E-rate discounts to enable upgrades to Northeast's existing network, expansion of the network to include more school districts, and voice and video services. Northeast followed the FCC's and USAC's bidding procedures, developing technology plans, filing Form 470s, and waiting the requisite 28 days before entering a service contract. At the end of this 28 days, despite receiving inquiries, Northeast only received one bid, which was from Trillion. After reviewing and deliberating on

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21 Mabe Dec. ¶9. At the time, Northeast had 46 member school districts as well as the Region VIII ESC. Since construction began on the network, five additional school districts have joined the consortium.

22 Mabe Dec. ¶12.

23 *Id.* ¶13.

24 Mabe Dec. ¶14.

25 Mabe Dec. ¶13.

26 Form 471 Application Number 412094.

the bid proposal and price, Northeast's Board approved the bid and entered a contract with Trillion, filing a Form 471 with USAC. For FYs 2005 to 2008 Northeast received funding commitments from USAC, while FYs 2009 and 2010 are still awaiting commitments. The following chart summarizes E-rate commitments Northeast received from USAC.[27]

C. Summary of Northeast's E-rate Bid History and Funding Commitments

Year	Funding Request	Form 470 Application#	Form 471 Application#	FRNs	Funding Commitment
2004	1	381790000479262	412094	1150140	$1,067,999.62
	2	381790000479262	412094	1156522	$13,556.42
	Total				**$1,081,556.04**
2005	1	381790000479262	454040	1247212	$759,218.42
	2	381790000479262	454040	1269050	$352,380.84
	Total				**$1,111,599.26**
2006	1	829880000573553	497054	1447586	$88,800.00
	2	829880000573553	497054	1472776	$8,274.00
	3	381790000479262	497054	1401382	$352,380.84
	4	829880000573553	497054	1401392	$121,656.00
	5	829880000573553	497054	1472742	$444,000.00
	6	381790000479262	497054	1401373	$759,218.42
	Total				**$1,774,329.26**[28]
2007	1	829880000573553	574440	1587611	$444,000.00
	2	829880000573553	574440	1587661	$8,746.80
	3	361620000610511	558270	1569333	$798,069.52
	4	361620000610511	558270	1569291	$764,598.22
	Total				**$2,015,414.54**
2008	1	829880000573553	607230	1754808	$354,534.00
	2	829880000573553	607230	1754878	$6,413.85
	3	160720000607817	607230	1724497	$468,598.22
	4	160720000607817	607230	1724572	$502,069.52
	5	756270000637608	607230	1752974	$47,290.71
	Total				**$1,378,906.30**

27 *See* USAC Automated Search of Commitments, Applicant Report for Northeast Texas Regional Education Telecommunications Network, *available at* www.usac.org/sl/tools/commitments-search/Default.aspx (last visited July 15, 2010).

28 In FY 2006, Northeast requested funding via Form 471Application Number 829880000573553, 471 Application Number 497054, FRN 1472812 in the amount of $3,960.00, which was not received.

Year	Funding Request	Form 470 Application#	Form 471 Application#	FRNs	Funding Commitment
2009	1	160720000607817	669497	1837107	$637,465.81
	2	160720000607817	669497	1837122	$764,654.79
	3	829880000573553	669497	1837138	$314,632.92
	4	756270000637608	669497	1875545	$46,651.64
	5	829880000573553	669497	1875591	$6,067.15
	Total				**$1,769,472.31**[29]
2010	Total	950030000800033	752417	2043353	$46,350.00
	Total				**$46,350.00**[30]

II. NORTHEAST PROPERLY CONDUCTED A COMPETITIVE BIDDING PROCESS FREE FROM CONFLICTS OF INTEREST

Northeast held a fair and open bidding process that was free from conflicts of interest and undue influence from Trillion. In your June 4, 2010 letter, you allege that the former Region VIII ESC Deputy Executive Director, Mr. Mabe, accepted gifts from Trillion in excess of federal gift standards and therefore failed to conduct a fair and open competitive bidding process free from conflicts of interest. However, Northeast and Mr. Mabe complied with all FCC competitive bidding procedures, which include developing a technology plan, seeking competitive bids, and filing application forms.[31]

A. Northeast's Competitive Bidding Process in FY 2006, 2007, and 2008

In your letter, you raise concerns regarding FYs 2006, 2007, and 2008 E-rate funding commitments due to Mr. Mabe's alleged acceptance of gifts from Trillion. Accordingly, this response concentrates on Northeast's bidding processes for the years in question. In each of these years, Mr. Mabe and Northeast complied with FCC competitive bidding procedures, entering valid agreements with the service provider Trillion.

1. FY 2006

In 2006, the Board determined that Northeast's network required technical upgrades to expand the existing network as the consortium grew. The Board also was interested in adding voice telephone services to the network. Northeast was required by FCC rules to

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29 These funding commitments are pending as Northeast has yet to receive a USAC Funding Commitment Decision Letter ("FCDL").

30 These funding commitments are pending as Northeast has yet to receive a USAC Funding Commitment Decision Letter ("FCDL").

31 *See* 47 C.F.R. § 54.500, *et seq.*; *Universal Service NPRM*, FCC 10-83, at *5 ¶10.

submit a new Form 470 because it was requesting additional services apart from the existing contract with Trillion for wireless WAN services. Northeast and Jill Duncan, Northeast's independent E-rate consultant, prepared two FY 2006 Form 470s. No one from Trillion was involved in developing the technical specifications for the FY 2006 Form 470s.[32] Through its Form 470, Northeast solicited bids from service providers for proposals to provide upgrades to the existing wireless WAN network.[33]

Northeast's Form 470 stated that the consortium was under contract with Trillion through FY 2008 for WAN services and that the upgrades were an amendment to the existing contract and voice services provided over the WAN. Since Trillion owned the existing wireless WAN network, potential bidders would have had to negotiate with Trillion to purchase access to the WAN network. Northeast indicated on its Form 470 that an RFP was not available and that Mr. Mabe was the contact person for information on the bid.

USAC posted Northeast's Form 470 on its website on January 11, 2006. Northeast held its bids open for the requisite 28 day period. To the best of Mr. Mabe's knowledge and understanding, he cannot recall whether he received inquiries from service providers other than Trillion during this bidding window. However, after keeping bidding open for at least 28 days, Northeast only received one bid, from Trillion. Northeast's Board reviewed and deliberated on Trillion's bid and considered the contract price.[34] On February 16, 2006, after the 28 day open bidding period expired, Northeast entered a six year service contract with Trillion for upgrades to the wireless WAN as well as voice services.[35]

2. FY 2007

For FY 2007, after preparing a technology plan, Northeast sought competitive bids by submitting to USAC an FCC Form 470, Form 470 Application Number 3616200006010511, describing the request for telecommunications services and internet access.

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32 Mabe Dec. ¶20; *see* FY 2006 Form 470 Application No. 829880000573553.

33 More specifically, Northeast requested the provision of: (1) telecommunications services, including, (a) additional internet bandwidth of 45 MB or greater, (b) WAN upgrades, and (c) WAN voice services for multiple school districts; and (2) internet access, including, (a) additional Internet bandwidth 45 MB or greater, and (b) WAN upgrades 15 MB or greater for multiple school districts. FY 2006 FCC Form 470 for Northeast, Form 470 Application No. 829880000573553, attached hereto as Exhibit D.

34 Mabe Dec. ¶21.

35 Northeast also submitted funding requests to USAC for the *pro rata* share of existing contracts in Application No. 381790000479262, which USAC awarded.

Specifically, Northeast requested: (1) telecommunications services, including, (a) licensed wireless WAN in multiple school districts in Northeast Texas, (b) a 100 MB backbone for consortium members, (c) 50 MB to remaining school districts, (d) 200 MB Bandwidth to Internet in three locations, and (e) an alternate path to Internet during outages to three point of presence ("POP") locations; and (2) internet access, including, (a) licensed wireless WAN for multiple school districts in Northeast Texas, (b) 100 MB backbone to Northeast members, (c) 50 MB of capacity to remaining school districts, (d) 200 MB Bandwidth to Internet with basic Firewall services at three locations, (d) an alternate path to Internet during outages to 3 POP locations.

Northeast indicated that an RFP was not available and that Mr. Mabe was the contact person for information on the bid. Northeast indicated in Item 13 that Northeast was then currently under contract through year 2008 for WAN services. USAC posted Northeast's Form 470 on its website on December 20, 2006 for the requisite 28 day period. However, after keeping bidding open for at least 28 days, Northeast only received one bid, from Trillion. Northeast's Board reviewed and deliberated on Trillion's bids and considered the contract price.[36] On January 25, 2007, well after the 28 day open bidding period, Northeast awarded a six year service contract to Trillion.

3. FY 2008

For FY 2008, the Board determined that another major upgrade to the existing network was necessary for expansion of the network.[37] Northeast and Jill Duncan were the only individuals that developed the FY 2008 Form 470. To the best of Mr. Mabe's knowledge and understanding, no one from Trillion was involved in developing the Form 470.[38] Northeast sought competitive bids by submitting to USAC two FCC Form 470s, Application Nos. 160720000607817 and 756270000637608, describing the request for telecommunications services and internet access.

In its FY 2008 Form 470,[39] Northeast requested: (1) telecommunications services, including, (a) wireless WAN in multiple school districts in Northeast Texas, (b) a 100 MB backbone for consortium members, (c) 50 MB to remaining school districts, (d) 200 MB Bandwidth to Internet with basic Firewall services in 3 locations, and (d) an alternate path to Internet during outages to 3 POP locations; and (2) internet access, including, (a) licensed wireless WAN for multiple school districts in Region VIII, (b) 100 MB backbone to Northeast's headquarters in Mt. Pleasant, Texas, (c) 50 MB of capacity to remaining school districts, (d) 200

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36 Mabe Dec. ¶21.

37 Mabe Dec. ¶29.

38 *Id.*

39 FCC Form 470 Application No. 160720000607817.

MB Bandwidth for Internet at 3 locations, (d) an alternate path to Internet during outages to Northeast's headquarters.

Northeast indicated on its Form 470 that it was under contract through FY 2008 for WAN services and that the upgrades were an amendment to the existing contract and voice services over the WAN. USAC posted Northeast's Form 470 on its website on January 11, 2006 for the requisite 28 day period. However, after keeping bidding open for at least 28 days, Northeast only received one bid, from Trillion. Northeast's Board reviewed and deliberated on Trillion's bid and considered the contract price. On January 25, 2007, well after the 28 day open bidding period, Northeast entered a service contract with Trillion.

For Form 470 Application No. 756270000637608, Northeast requested: (1) telecommunications services, including, (a) wireless WAN in multiple school districts in Northeast Texas, (b) WAN and internet services for six school districts, and (c) 50 MB POP Internet with basic firewall services for 1 location; and (2) internet access, including, (a) wireless WAN for multiple school districts in Region VIII, (b) WAN and internet service for six school district locations, (c) 50 MB POP Internet with basic firewall service to one location. Northeast indicated on its Form 470 that it was under contract through FY 2008 for WAN services and that the upgrades were an amendment to the existing contract and voice services over the WAN. USAC posted Northeast's Form 470 on January 8, 2008 for the requisite 28 day period. However, after keeping bidding open for at least 28 days, Northeast only received one bid from Trillion. Northeast's Board reviewed and deliberated on Trillion's bid and considered the contract price.[40] On February 7, 2008, after the 28 day open bidding period, Northeast entered a service contract with Trillion.[41]

B. Northeast Complied with the FCC's Bidding Procedures

In the Communications Act, Congress limited E-Rate discounts to services provided in response to *bona fide* requests for services from an eligible entity such as a school, library, or a consortium of eligible entities.[42] Section 54.504 of the FCC's rules, implementing this statutory requirement, provides that E-Rate eligible schools must seek "competitive bids" to qualify for E-rate discounts.[43] The FCC's rules require only a few specific bidding procedures

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40 Mabe Dec. ¶21.

41 For FY 2008, Northeast also requested the *pro rata* portion of E-rate funds for FY 2008 for Form 470 Application No. 829880000573553, which USAC awarded.

42 47 U.S.C. § 254(h)(1)(B); *see* 47 C.F.R. § 54.504(a); *see also* Federal-State Joint Board on Universal Service, *Report & Order*, 12 FCC Rcd 8776, 9076 ¶570 (1997), as corrected by Federal-State Joint Board on Universal Service, *Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom.*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

43 47 C.F.R. § 54.504(a).

designed to ensure a competitive bidding process, which include developing a technology plan, seeking competitive bids, and filing application forms.[44] The applicant must consider all bids before entering a service contract and select the most-cost effective service offering with price being the primary factor.[45] Section 54.504(a) states that applicants must comply with "these competitive bid requirements," clearly implying that the requirements specified are all of the applicable federal requirements.

Northeast unquestionably complied with these explicit FCC requirements. As shown above, in each of the funding years, Northeast completed a Form 470 that specified in detail the telecommunications services it intended to purchase. Northeast posted the Form 470 on USAC's website and waited the required 28 days to receive bids from interested providers. In each instance, Northeast received only one bid in response to its Form 470 – a bid from Trillion. Nevertheless, Northeast's Board reviewed the bid consistent with the FCC's rules – with price being the primary factor – and duly approved the Trillion bid.[46] Thereafter, Northeast signed a contract with Trillion and properly submitted a Form 471.

These central facts are not in dispute. They are sufficient to demonstrate that Northeast's funding requests are valid under the applicable FCC rules. Accordingly, Northeast submits that USAC should approve the funding requests based on these undisputed facts. Further, as shown in the next section, Northeast disputes that any gifts were provided to Mr. Mabe and shows that the alleged gifts were permissible reimbursements under both Texas rules and Federal gift standards.

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44 *See* 47 C.F.R. § 54.504.

45 47 C.F.R. § 54.511(a); In the Matter of Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future, *Notice of Proposed Rulemaking*, CC Docket No. 02-6, GN Docket No. 09-51, FCC 10-83 (rel. May 20, 2010) ("*Universal Service NPRM*"); In the Matter of Request for Review of a Decision of the Universal Service Administrator by Ysleta Independent School District, *et al.*, Schools and Libraries Universal Service Support Mechanism, *Order*, CC Dockets Nos. 96-45, 97-21, FCC 03-313, 18 FCC Rcd 26406, 26429 ¶48 (2003) ("*Ysleta*") (citing *Universal Service Order*, 12 FCC Rcd at 9029-30 ¶481).

46 Notably, USAC's concerns relate the perceived conflicts created by alleged gifts to Mr. Mabe. Mr. Mabe, however, was employed by the Region VIII ESC, not by Northeast, and he was not eligible to vote to approve the Trillion contracts. *See* Mabe Dec. ¶¶2, 5 (Mr. Mabe was not a member of the NTRETN Board and did not approve the Trillion contracts). Thus, even if certain gifts were provided – which, as described below, Northeast denies – they did not affect the outcome of the competitive bidding process.

C. Alleged Gifts To Mr. Mabe

With respect to the alleged gifts from Trillion to Mr. Mabe during funding years 2006-08, Northeast provides this additional information concerning the assertions in your letter. The information here summarizes and supplements the information previously provided to USAC. It is our understanding based on your letter that funding years 2004 and 2005 are not an issue at this time, therefore we only address the relevant funding years 2006-08.[47] Importantly, other than the alleged gifts to Mr. Mabe, USAC does not assert other connections with Trillion that constitute a conflict of interest.

1. FCC's Competitive Bid Rules

At the outset, Northeast disagrees with your assertion that federal gift standards are applicable in this instance. As explained above, the *only* applicable FCC rules are those adopted in Section 54.504(a). Those standards are procedural, as described above. Nothing in the rules incorporates, references or applies additional federal standards to the competitive bid process. The FCC has *not* adopted rules relating to the receipt of gifts by E-rate applicants and, in particular, has not applied federal employee gift standards to E-rate applicants.

Your letter cites to the FCC's decisions in *Ysleta*, *Mastermind*, *SEND Technologies*, and *Caldwell Parish* for the proposition that e-rate applicants must conduct "a fair and open competitive bidding process free from conflicts of interest." Northeast does not dispute this proposition. However, these cases do not stand for the proposition that federal gift standards apply to e-rate applications. In fact, none of the cases even involved alleged gifts to an e-rate applicant. Instead, each of the cases dealt with the process for creating a Form 470 and with the FCC's procedural rules surrounding the bid window and consideration of bids. Thus, the precedent you cite do not support the claimed assertion that Northeast's applications can be denied for alleged improper gifts.

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47 Northeast disagrees with the assertions made regarding gifts during funding years 2004 and 2005 as well. In your letter you allege Trillion provided Mr. Mabe with gifts of $38.07 (2004) and $310.09 (2005) for "meals, golf outings, and travel." As we will explain, the Federal gift standards do not apply to E-rate applicants, even so, Federal gift standards exempt Mr. Mabe's travel in the furtherance of official duties. *See infra* note 63. Further, these gifts are exempted from Texas gift standards because they involve meals, entertainment and travel. *See* TEXAS PENAL CODE § 36.10(b). Finally, these alleged gifts cannot be classified as gifts because nothing of monetary value was conferred on Mr. Mabe because he accepted these expenses in furtherance of his official duties. Finally, any alleged golf outings were reciprocal in that Mr. Mabe returned the favor of access to a golf club used by Trillion members with golf outings at Mr. Mabe's country club, therefore no value was conferred. *See* Mabe Dec. ¶23.

The fact that no specific federal gift standards apply is confirmed by a pending FCC Notice of Proposed Rulemaking in the FCC's universal service docket.[48] In a May 20, 2010 *Notice of Proposed Rulemaking*, the FCC proposes to amend its rules governing E-rate applications. The Commission proposes to add to its competitive bid rules an affirmative requirement that an applicant "conduct a fair and open bidding process when seeking bids for services eligible for E-rate support."[49] As a companion to this new proposed rule, the Commission proposes "illustrative guidance" of types of behavior that would constitute a violation of the proposed "fair and open bidding process" rule. One illustrative example would be a prohibition on service providers offering or providing gifts, including meals, to an applicant's employees or board members.[50] Such a new rule would not be required if the FCC already had applied federal gift standards to e-rate applicants, as your letter asserts.

In short, at this time, there is no rule that permits denial of an application based on alleged gifts that do not otherwise violate state or local bidding procedures. Moreover, as shown below, Northeast shows that the alleged gifts were permissible reimbursements under both Texas rules and Federal gift standards.

2. Northeast Disputes Many of the Facts Alleged

In your letter, you allege that Trillion offered and Mr. Mabe accepted valuable gifts in the form of "meals, golf outings, and travel" exceeding federal gift standards. More specifically, you allege that Mr. Mabe received gifts in the years at issue of $48.86 (2006), $747.83 (2007), and $44.04 (2008). It is our understanding that the gifts you allege in your letter are based on receipts provided by Trillion. However, neither USAC nor Trillion have provided Northeast with copies of the underlying receipts or an accounting breakdown of the specific gifts alleged. Without Trillion's receipts, and a breakdown of expenses, it is impossible for Northeast to respond fully to USAC's factual allegations at this time. Therefore, after consideration of the additional information below, if USAC continues to have concerns about specific expenses, Northeast would be happy to work with the Administrator to examine these issues further. In such a case, we request that USAC provide the documentation supporting the specific gift or gifts that Mr. Mabe is alleged to have received from Trillion.

Nevertheless, even based on the information we have available, it appears that Trillion's receipts and documentation contain significant factual errors. Most notably, in your letter, you allege that Mr. Mabe attended a dinner on February 5, 2008 at the Moonshine Bar &

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48 In the Matter of Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future, *Notice of Proposed Rulemaking*, CC Docket No. 02-6, GN Docket No. 09-51, FCC 10-83 (rel. May 20, 2010) ("*Universal Service NPRM*").

49 *Id.* at *12 ¶27.

50 *Id.* at *14 ¶29.

Grill in Austin, Texas just prior to signing a contract with Trillion. However, **on February 5, 2008, Mr. Mabe was in Oklahoma City, Oklahoma – over 350 miles from Austin – presenting at the Oklahoma Technology Association trade show.** Mr. Mabe's travel voucher, attached to his Declaration, shows that Mr. Mabe could not have attended a dinner in Texas with Trillion representatives because he was in Oklahoma.[51] Thus, Mr. Mabe did not receive a "gift" of a meal at the Moonshine Bar & Grill. Trillion's records clearly contain an error, and should not be relied upon by USAC.

Similarly, in previous correspondence USAC asserted that Mr. Mabe received a golf club from Trillion.[52] However, that is simply incorrect. This allegation appears to rely upon an email in which a Trillion employee jokingly cautions Mr. Mabe to "take care" (or words to that effect) of his new golf club. Apparently, some have interpreted this comment as evidence that Trillion purchased a new golf club for Mr. Mabe. However, this is not the case. The "new club" in question was purchased by Mr. Mabe, *not* by Trillion, and the email appeared to refer to Mr. Mabe's exceptional performance using the club during a recent outing.[53] Thus, the conclusion that Mr. Mabe received a golf club as a gift is erroneous.

3. Even if Federal Standards Applied, Mr. Mabe did not Receive Impermissible Gifts

Assuming, *arguendo*, the Federal gift standards apply and that Mr. Mabe accepted meals and travel expenses from Trillion, these are legitimate expenses incurred in the performance of Mr. Mabe's official duties. Thus, such reimbursements would be in full compliance with FCC and Federal gift standards (were they to apply). The FCC's rules maintain that travel, subsistence (*i.e.* meals, etc.) and other related expenses for meetings or events are acceptable under the FCC's rules.[54] Further, Federal employees governed by the Federal gift standards, 5 C.F.R. Part 2635, are allowed to accept travel reimbursements for an employee to attend a meeting or similar function relating to the employee's official duties. Under the Federal gift standards, a "gift" does not include travel or related expenses accepted by agencies for an employee to attend a meeting or similar function relating to the employee's official duties.[55]

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51 Mabe Dec. ¶ 29; *see also*, Travel Voucher, Region VIII Education Service Center, for David Mabe Feb. 1, 2008 to Feb. 28, 2008, attached hereto as Exhibit E.

52 *See supra* note 2.

53 Mabe Dec. ¶ 24.

54 *See* 47 C.F.R. § 1.3000 (citing 5 C.F.R. Part 2635); *see also* 5 U.S.C. § 7353 (civil gift statute).

55 5 C.F.R. § 2635.203(b)(8) (citing 31 U.S.C. § 1353 and 41 C.F.R. § 304-1); *see also*, 31 U.S.C. § 1353 (empowering the Administrator of General Services to prescribe by regulation conditions under which a Federal employee can accept travel expenses at any meetings or similar function related to their official duties).

Furthermore, the Federal rules define a meeting or similar function as "conference, seminar, training course or similar event."[56] In incorporating the Federal gift standards for FCC employees, the FCC noted that the General Services Administration refused to impose a flat ban on travel payments from agency-regulated sources, concluding such a ban would be counter-productive in light of the clear intent of the Federal gift statute to allow agency travel budgets to take advantage of donated travel payments when required to carry out an agency's function.[57] Likewise, in tough economic times, cash-strapped school districts should be allowed to take advantage of travel payments in furtherance of official duties, which the FCC and Federal gift standards actually encourage in these situations.

Even if Mr. Mabe accepted meal and travel expenses from Trillion, these expenses were perfectly legitimate under FCC and Federal gift standards because they were accepted in furtherance of Mr. Mabe's official duties. Mr. Mabe was the Region VIII ESC deputy executive director and the technology coordinator for Northeast. As such, Mr. Mabe acted as liaison between Region ESC, Northeast, and Trillion.[58] From 2006-08, Trillion had ongoing contractual commitments to provide wireless WAN services to Northeast pursuant to multi-year contracts. Network management required ongoing coordination between Mr. Mabe and Trillion.

In connection with Mr. Mabe's network management responsibilities, Trillion may have provided Mr. Mabe with a flight from Mt. Pleasant, Texas (where the Region VIII ESC is located) to Trillion's headquarters in Austin, Texas to discuss technical issues Northeast was having with Trillion's WAN services. Mr. Mabe may also have had a few working lunches provided by Trillion in Mt. Pleasant and Austin during meetings discussing Northeast's network maintenance.[59] However, any travel and meal expenses were not provided to Mr. Mabe as a personal benefit but rather in connection with the performance of his official duties – to manage

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56 41 C.F.R. § 304-2.1 (defining a meeting or similar function as a conference, seminar, training course or similar event).

57 *See* In the Matter of Amendment of the Commission's Rules to Implement Section 4(g)(3) of the Communications Act of 1934, as Amended, 47 U.S.C. 154(g)(3), the Commission's Statutory Gift Acceptance Authority, *Report & Order*, FCC 94-177, G.C. Docket No. 93-153, 9 FCC Rcd 3429, 3429-3430 ¶5, 3431 ¶13 (1994) ("*Gift R&O*"); *see also, id.* at 3431 ¶11 (gifts that are associated with conventions, meetings, and other widely-attended events allow acceptance of such gifts).

58 Mabe Dec. ¶ 17 ("As the coordinator the NETRETN network [David Mabe] was the liaison between the NETRETN member school districts and [NETRETN's] service provider and the owner of the network, Trillion.")

59 Mabe Dec. ¶ 23.

the consortium's wireless WAN and coordinate with the service provider Trillion.[60] As previously stated, travel expenses and meals are perfectly acceptable under federal and FCC gift standards in the furtherance of official duties.[61] Therefore, acceptance of meal and travel expenses cannot serve as a bar to Northeast's E-rate funding.

The same conclusion applies to other expenses described in your letter. Mr. Mabe recalls attending a widely-attended one-day customer summit in Austin, Texas where Trillion provided airfare, a box lunch, and possibly, though Mr. Mabe cannot recall, lodging. The purpose of the summit was for Trillion to receive feedback from Trillion customers, including Northeast, regarding customer service and reliability issues.[62] Mr. Mabe's attendance cannot be considered a gift because he did not gain any personal benefit from attending this conference. Rather, the travel, meal, and potential lodging were incurred in connection with Mr. Mabe's official duties as Northeast's Deputy Executive Director, which are exempted under Federal gift standards.[63] As previously stated, under Federal gift standards a "gift" does not include travel or related expenses to attend widely-attended conferences or similar function relating to the employee's official duties.[64] The conference Mr. Mabe attended is precisely the type of conference the Federal rules not only allow but sought to encourage. It would be counter-productive and contrary to the policy goals of the E-rate program to prohibit E-rate funded schools to attend conferences that actually seek to improve E-rate services provided by service

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60 Mabe Dec. ¶ 17 ("As the coordinator the NETRETN network [David Mabe] was the liaison between the NETRETN member school districts and [NETRETN's] service provider and the owner of the network, Trillion.")

61 5 C.F.R. § 2635.203(b)(8) (citing 31 U.S.C. § 1353 and 41 C.F.R. § 304-1); *see Gift R&O*, 9 FCC Rcd at 3429-3430 ¶5, 3431 ¶13; *see also*, 31 U.S.C. § 1353 (empowering the Administrator of General Services to prescribe by regulation conditions under which a Federal employee can accept travel expenses at any meetings or similar function related to their official duties); *see also* Office of Government Ethics Opinion 98 X 8 (June 25, 1998).

62 Mabe Dec. ¶ 28.

63 5 C.F.R. § 2635.203(b)(8) (citing 31 U.S.C. § 1353 and 41 C.F.R. § 304-1); *see Gift R&O*, 9 FCC Rcd at 3429-3430 ¶5, 3431 ¶13; *see also*, 31 U.S.C. § 1353 (empowering the Administrator of General Services to prescribe by regulation conditions under which a Federal employee can accept travel expenses at any meetings or similar function related to their official duties); *see also* Office of Government Ethics Opinion 98 X 8 (June 25, 1998).

64 5 C.F.R. § 2635.203(b)(8) (citing 31 U.S.C. § 1353 and 41 C.F.R. § 304-1); *see also*, 31 U.S.C. § 1353 (empowering the Administrator of General Services to prescribe by regulation conditions under which a Federal employee can accept travel expenses at any meetings or similar function related to their official duties); 41 C.F.R. § 304-2.1 (defining a meeting or similar function as a conference, seminar, training course or similar event).

providers. Based on feedback Trillion received at the summit, Trillion improved their quality of service to Northeast.[65]

Finally, at least two (and perhaps more) of Mr. Mabe's alleged golf outings with Trillion representatives cannot be considered gifts under Federal and FCC standards because they occurred at Mr. Mabe's country club. In your letter, you allege that Mr. Mabe accepted as a gift golf outings provided by Trillion. Under, FCC and Federal standards, a "gift" is a benefit having monetary value, including a service or tangible item, that is conferred upon an individual.[66] However, if there is no actual benefit conferred upon an individual, there is no gift to that individual to fall within the scope of the Federal gift standards.

Any of the alleged golf outings that took place at the country club where Mr. Mabe is a member cannot be considered gifts under Federal gift standards.[67] As a member of a country club in Mt. Pleasant, Texas, Mr. Mabe accessed his club golf course pursuant to membership fees that he incurred, not from any expenses incurred by Trillion. When Trillion and Mr. Mabe played golf at Mr. Mabe's country club course there was no "benefit" conferred upon Mr. Mabe because he already paid for this benefit. These golf outings cannot be considered gifts under the FCC and Federal gift standards because no actual benefit was conferred upon Mr. Mabe by Trillion.[68] It is not clear from the allegations in your letter, which golf outings were held at Mr. Mabe's country club and which were not. Further, Trillion representatives received a benefit by playing golf at Mr. Mabe's country club. Even if Mr. Mabe received a golf outing provided by Trillion, Mr. Mabe reciprocated with golf outings at his own country club.[69] This was conducted as part of normal business practice to meet and discuss network operations and could be exempted as a meeting in furtherance of official duties.

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65 Mabe Dec. ¶ 28.

66 *See* 5 C.F.R. § 2635.203(b) ("*Gift* includes any gratuity, favor, discount, entertainments, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred."); *see also*, 47 C.F.R. 1.3001(b) ("The term *gift* means any unconditional gift, donation or bequest or real, personal and other property (including voluntary and uncompensated services as authorized under 5 U.S.C. § 3109)."); *see* Office of Government Ethics Opinion 94 X 19 (Nov. 14, 1994) ("The key concept of the definition contained in the Standards [of Ethical Conduct for Federal Employees] is that something is a gift if a benefit, having monetary value, is conferred upon the employee"). Therefore, if a benefit with monetary value is not conferred on a Federal employee or other individual, then there is no "gift."

67 *Id.*

68 *Id.*

69 Mabe Dec. ¶ 23.

D. Mr. Mabe Complied with Texas Gift Standards

It is important to note that. in addition to complying with FCC and Federal gift standards, Mr. Mabe complied with the applicable Texas state gift standards in competitive bidding. The FCC rules stipulate that the FCC's competitive bidding rules are *in addition to* state and local bidding rules.[70] These state and local rules already govern the actions of school districts in selecting service providers. In particular, state and local rules already address requirements to ensure a fair and open process, such as the prohibition on the receipt of improper gifts. Therefore, as a consortium located in the State of Texas Northeast must comply with Texas rules, including the Texas Penal Code, which imposes gift standards on public servants. Under Texas law, public servants are prohibited from accepting benefits from someone the servant knows to be subject to the regulatory authority of the servant.[71] A benefit means a pecuniary gain.[72] However, the Texas gift standards specifically exempt "food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law."[73] The Texas Ethics Commission indicates that an individual is a "guest" if the member of the host organization is present.[74]

Mr. Mabe complied with Texas law because Mr. Mabe's alleged acceptance of food, lodging, transportation and entertainment expenses are exempted from Texas' gift standards. In your letter you allege that Mr. Mabe accepted "meals, golf outings, and travel" from Trillion. The Texas gift standards specifically exempt food, lodging, and transportation when the state employee is a guest of the entity providing those items.[75] As previously explained, Mr. Mabe may have accepted working lunches and a box lunch at a Trillion summit. As meals accepted as a guest of Trillion, these "gifts" are entirely permissible under Texas law.

It was also permissible under Texas law for Mr. Mabe to accept golf outings with Trillion representatives. As with our discussion of Federal standards, the golf outings that occurred at Mr. Mabe's country club cannot be considered gifts because Trillion did not confer a

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70 47 C.F.R. § 54.504(a).

71 TEXAS PENAL CODE § 36.08(a) (gifts to public servants).

72 *Id.* § 36.01(4).

73 *Id.* § 36.10(b) (exception to the public gift standards in TEXAS PENAL CODE § 36.08).

74 *Id.* § 36.10(b); *see* Ethics Advisory Opinion No. 71, Texas Ethics Commission (Oct. 23, 1992), *available at* http://www.ethics.state.tx.us/opinions/071.html (last visited July 29, 2010) (In discussing the Texas Penal Code's gift standards, TEXAS PENAL CODE § 36.08, the Texas Ethics Commission notes implies that "golf games" are "entertainment" and acceptable by a "guest" as long as the member of the host organization is present);

75 *Id.* § 36.10(b) (exception to the public gift standards in TEXAS PENAL CODE § 36.08).

benefit or pecuniary gain on Mr. Mabe under Texas law. Mr. Mabe paid for his membership fee to play at his country club – not Trillion.[76] Therefore, these golf outings were not even "gifts" under Texas law.[77] Further, even if Mr. Mabe accepted golf outings provided by Trillion, these outings should be classified as "entertainment" in which Mr. Mabe was a "guest" of Trillion. The Texas Ethics Commission suggests that "golf games" are a form of "entertainment," which is exempted from the Texas gift standards if the public servant is a "guest" of the organization that provided the entertainment.[78] Mr. Mabe was clearly a "guest" because Mr. Mabe is alleged to have played golf *with* Trillion representatives – the organization that allegedly provided the entertainment.[79] Under Texas law, Mr. Mabe's golf outings are permissible.[80]

III. NORTHEAST MAINTAINED AN ARMS-LENGTH RELATIONSHIP WITH THE SERVICE PROVIDER

Mr. Mabe's relationship and interaction with Trillion was appropriate under the FCC's competitive bidding rules and did not constitute a conflict of interest. In your letter, you allege that Mr. Mabe's interactions with Trillion failed to maintain an arms-length relationship during the competitive bidding process and, therefore, violated the FCC's requirement of a fair and open competitive bidding process free from conflicts of interest. More specifically, you allege that: (1) Mr. Mabe provided Trillion with inside information regarding Northeast's needs and details about its procurement process; (2) Trillion influenced the procurement process by providing input into Northeast's RFP and FCC Form 470 to ensure Trillion would be awarded the contract; and (3) before bids were submitted and the selection made, Northeast signaled that it would award the contract to Trillion. Northeast disputes these assertions. As explained below,

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76 *See id.* § 36.08(a); *Id.* § 36.01(4).

77 *See id.* §§ 36.08(a), 36.01(4) (defining gifts and benefits).

78 See Ethics Advisory Opinion No. 71, Texas Ethics Commission (Oct. 23, 1992), *available at* http://www.ethics.state.tx.us/opinions/071.html (last visited July 29, 2010) (In discussing the Texas Penal Code's gift standards, TEXAS PENAL CODE § 36.08, the Texas Ethics Commission implies that "golf games" are entertainment and acceptable by a "guest" as long as the member of the host organization is present).

79 *Id.*

80 In your letter, you state that the FCC has "determined for another Texas E-rate applicant" that even though the offer and acceptance of gifts is allowable under Texas law, it does not mitigate the conflict of interest created when applicants accept the gifts. However, you fail to cite this case directly in your letter and we were unable to locate such a decision. You do cite the FCC's *Ysleta* decision, which involved Texas E-rate applicants; however, that case did not involve gifts by the service provider to the applicant. Rather, in *Ysleta* the applicants failed to comply with the FCC's competitive bidding procedures by failing to provide sufficient information for bidders to formulate bids. *Ysleta*, 18 FCC Rcd at 26409 ¶3. As we discussed, that is simply not this case here, as Northeast complied with all competitive bidding procedures specified by the FCC.

Northeast conducted a bidding process that was fair and open to all potential bidders – the fundamental objective of the FCC's competitive bidding rules.[81]

In your letter, you raise concerns based on available information for all FRNs except for: (1) FY 2010[82]; and (2) FRNs that reference the original contract with Trillion, based on FCC Form 470, Form 470 Application Number 381790000479262. For these FRNs, it is our understanding that USAC agrees that Northeast conducted a fair and open competitive bidding process free from conflicts of interest. The following FRN funding commitments reference the original contract with Trillion and FCC Form 470 or FY 2010 and therefore are exempted from our inquiry here.

Year	Funding Request	Form 470 Application #	Form 471 Application#	FRN	Funding Commitment
2004	1	381790000479262	412094	1150140	$1,067,999.62
	2	381790000479262	412094	1156522	$13,556.42
	Total				**$1,081,556.04**
2005	1	381790000479262	454040	1247212	$759,218.42
	2	381790000479262	454040	1269050	$352,380.84
	Total				**$1,111,599.26**
2006	3	381790000479262	497054	1401382	$352,380.84
	6	381790000479262	497054	1401373	$759,218.42
	Total				**$1,111,599.26**
2010	Total	950030000800033	752417	2043353	$46,350.00
	Total				**$46,350.00**[83]

A. Mr. Mabe Did Not Provide Trillion with Inside Information

In your letter you allege that Mr. Mabe provided Trillion with insider information regarding Northeast's needs and details about the procurement process. In order to respond to these allegations, Northeast requires a more specific factual basis. However, Mr. Mabe never provided Trillion with inside information. During the years in which you raise concerns, 2006-08, Trillion had an multi-year contract, set to expire June 30, 2010, with Northeast to provide a wireless WAN. Northeast notified potential bidders in its FY 2006-08 Form 470s that it "was

81 In the Matter of Request for Review of a Decision of the Universal Service Administrator by Lazo Technologies, Inc. et al., Schools and Libraries Universal Service Support Mechanism, *Order*, CC Docket No. 02-6, DA 09-1797, 24 FCC Rcd 10675, 10679 ¶10 (2009).

82 FCC Form 470 Application Number 950030000800033, FRN 2043353.

83 These funding commitments are pending as Northeast has yet to receive a USAC Funding Commitment Decision Letter ("FCDL").

currently under contract through year 2008 for WAN services."[84] This contract overlapped with four Form 470 Application bidding windows.[85] USAC may be mistaking legitimate network maintenance and coordination between a technology coordinator and a service provider under a multi-year contract for inside information. Northeast had to share its technological requirements and needs with Trillion to effectively manage the networks covered by the existing E-rate commitments.[86] It would be contrary to the goals of the E-rate program and counter-productive to prohibit all contact between an applicant and the service provider in such instances.

These contacts would not provide "inside" information to Trillion, nor would they provide bid-related information not readily available to others through the FCC Form 470. As the FCC suggested in *Caldwell Parish*, to ensure fairness and openness, the FCC is concerned with applicants revealing information to the service provider that was not shared with all prospective bidders.[87] In *Caldwell Parish*, an applicant admitted that the service provider helped the applicant determine the types of services to seek, assisted the applicant complete Form 470, which the FCC found problematic because the applicant revealed information to the service provider that it did not reveal to other providers.[88]

Unlike the applicant in *Caldwell Parish*, Mr. Mabe did not reveal information to Trillion that it did not reveal to other potential bidders through its Form 470. Trillion did not have "inside" information, and therefore an unfair competitive advantage, compared to other potential bidders. Further, in *Caldwell Parish*, applicant's service provider actually assisted in filling out and submitting FCC Form 470.[89] Unlike the applicant in *Caldwell Parish*, Northeast's Board members and E-rate consultant Jill Duncan, not the service provider, actually filed out and submitted the FCC Form 470.[90] Further, Trillion did not help Northeast determine the types of services to seek.

In your letter, you also allege more specifically that Mr. Mabe shared a draft Form 470 with Jennifer Carter ("Ms. Carter"), prior to the forms being posted on USAC's website.

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84 FCC Form 470 Application Nos. 829880000573553, 361620000610511, 160720000607817, 756270000637608.

85 FCC Form 470 Application Nos. 829880000573553, 361620000610511, 160720000607817, 756270000637608.

86 Mabe Dec. ¶ 22.

87 *See Caldwell Parish*, 23 FCC Rcd at 2790 ¶16.

88 *Id.* ¶¶15-19.

89 *See Caldwell Parish*, 23 FCC Rcd at 2790 ¶17.

90 Mabe Dec. ¶10. ("Jill Duncan and the NETRETN Board members were the only individuals involved in drafting the specifications for the Form 470 for funding year 2004 and any applicable funding year thereafter").

The particular incident you are referring to involves an email exchange that occurred on January 8, 2008, in which Mr. Mabe appears to email a copy of a Form 470 to Ms. Carter.[91] However, January 8, 2008 is the very same day in which a Form 470 was posted to USACs website for competitive bidding.[92] Further, in the context of the email chain it appears Mr. Mabe did nothing more than forward a final Form 470 to Ms. Carter that may have already been posted to USAC's website.[93] It is clear that Ms. Carter did not influence the form prior to filing. If Ms. Carter received the Form 470 before it was posted, which it is not clear, the advantage would be minimal because it was likely the same day as the Form 470 was posted. Regardless, the information shared with Ms. Carter on the draft Form 470 was the same information that was provided on the final Form 470, submitted to USAC.[94] Therefore, there was no actual affect on the competitive bidding process even if Mr. Mabe inadvertently circulating a draft Form 470. This complies with the intent of *Caldwell Parish* in ensuring all bidders receive the same information.

B. Trillion Did Not Influence Northeast's Form 470

In your letter, you assert that "Trillion influenced the procurement process by providing input into Northeast's RFP and FCC Form 470 to ensure that Trillion would be awarded the contract." First, without specific information regarding the factual basis for your allegation, Northeast cannot provide comprehensive response.[95] In any event, Northeast confirms here that its Form 470s were prepared by Northeast personnel alone, not by Trillion.

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91 Email from David Mabe, Region VIII ESC, to Jennifer Carter (Jan. 8, 2008), attached hereto as Exhibit F (David Mabe emails a document that apparently is Form 470 to Jennifer Carter).

92 *See* FCC Form 470, *Schools and Libraries Universal Service Description of Services Requested and Certification Form*, Northeast Texas Regional Education Telecommunications Network, Application No. 756270000637608, Funding Year Jan. 1, 2008 to June 30, 2009, attached hereto as Exhibit G (noting that the Form was posted on January 8, 2008).

93 *See* Email from Jill Duncan, the Origin Group, to David Mabe, Region VIII ESC (Jan. 8, 2008), attached hereto as Exhibit H (At 4:13 PM, Jill Duncan, Northeast's E-rate consultant emails a copy of Form 470 to David Mabe with the statement "so you don't have to get it on the [USAC] website," which strongly suggests this was the final Form 470 that was actually posted to the USAC website); Email from David Mabe, Region VIII ESC, to Jennifer Carter (Jan. 8, 2008), attached hereto as Exhibit F (At 4:24 PM, David Mabe emails a document that apparently is Form 470 to Jennifer Carter).

94 Mabe Dec. ¶31.

95 *See* In the Matter of Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies, *et al.*, Schools and Libraries Universal Support Mechanism, *Order*, CC Docket No. 02-6, FCC 06-55, 21 FCC Rcd 5348, 5350 ¶6 (2006).