



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

**February 4, 2011**

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: Newton County School District, Decatur, MS  
Funding Year: 2009  
FRN Denied: 1875811  
Form 471 Application Denied: 685420  
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 rationale as to why USAC's mass denial of funding is without merit. Please accept this Individual appeal for Newton County 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 Newton County 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 \$105,062 in order to construct the Newton County School District's network providing critical services with a total contract value of \$1,948,046. Also, there is an additional

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\$198,900 in future investment to further build out the network, yet the amount of the routine business meals and expenses only amounted to \$48.60 on average per year across the entire district. All expenses occurred after the school district was an existing customer and no meal, gift or gratuity went to any individual with decision making authority.

### **Communications**

USAC also has denied Newton County School District's funding request due to communication issues. Trillion denies USAC's allegations. USAC never points to which communications specifically tainted the fair and open bid process. In the FCDL denial letter, USAC simply states...

and therefore funding is denied. <><><> DR2: This FRN is 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.

USAC did provide to Newton County School District and intent to deny letter on August 25, 2010. In this letter, USAC states the following...

*"All Trillion FRNs within FY 2009 Form 471# 685420 and FY 2010 Form 471# 764153 will also be denied because Newton County School District did not conduct a fair and open competitive bidding process. The Form 470 associated with all the FRNs listed above was posted on 12/19/2008 with an Allowable Contract Date of 1/16/2009. Documentation indicates that School District personnel engaged in numerous meetings, e-mail discussions, and verbal discussions with Trillion employees beginning prior to the posting of the Form 470. These discussions were not general marketing discussions, but rather show that Trillion had inside information regarding your needs and that Trillion influenced the procurement process."*

### **Communication Was Within Rules:**

Trillion firmly believes that there is no basis whatsoever for USAC to deny these applications. Per the Master Appeal Summary filed with the FCC on November 3, 2010, an incumbent service provider will have a variety of discussions with their customer. All of the e-mail communications provided were just that, discussions between an incumbent service provider and their customer.

As a matter of fact, the majority of the e-mail traffic between Trillion and Newton County Schools were regarding USAC's lack of processing specific Newton County School District's funding requests. The following e-mails are examples of those discussions:

*"Hey Jennifer,  
I emailed the guy who was doing the review the day we last talked. I haven't heard from him and actually forgot about it. I called and talked to someone at Schools and Libraries help desk. She couldn't really tell me anything but gave me the number to someone else. I called this person and left a message. As soon as I hear back from him, I will let you know what he says. Thanks for reminding me.*

*Justin Mills  
Technology Coordinator  
Newton County Schools*

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601.635.2317

>>> "Jennifer Carter" <jennifer.carter@trillion.net> 05/27/08 3:04 PM

>>> >>>

Hey Justin,

*What have you heard lately from SLD regarding your Trillion application for FY2006? The last time I talked to you, you were going to contact the SLD. I am checking in now to find out if you did in fact call and if so, what you heard back from them. We need to do everything we can to get that year wrapped up.*

*Let me know something soon. Thanks much,*

Jennifer Carter  
E-Rate Specialist  
Trillion  
[www.trillion.net](http://www.trillion.net)  
205.383.4396 Direct  
512.334.4100 Main  
512.684.1148 Fax

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- Professionalism & Respect*
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- Having Fun!"*

The next set of e-mails is also an example of the same type of communications:

*"I know this is terribly frustrating, but I would try emailing Paul Stankus at SLD. He is the ombudsman and is there to help get to the bottom of E-Rate mysteries such as this. He has been a big help to us recently on some other issues. His email address is pstankus@usac.org. Let me know what (if anything) you find out.*

*Thanks again.*

Jennifer Carter  
E-Rate Specialist  
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*-----Original Message-----*

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*From: Justin Mills [<mailto:jmills.NEWTON.DIST5100-DOMAIN@newton.k12.ms.us>]  
Sent: Monday, July 21, 2008 2:40 PM  
To: Jennifer Carter  
Subject: RE: congrats and 486 reminder*

*I have tried calling and emailing and no one can tell me anything other than it is still under review. I asked several people that I spoke with if there was anything else I could do, and they said no. I don't know what to do.*

*Justin Mills  
Technology Coordinator  
Newton County Schools  
601.635.2317*

*>>> "Jennifer Carter" <[jennifer.carter@trillion.net](mailto:jennifer.carter@trillion.net)> 07/21/08 2:31 PM  
>>> >>>  
Sounds good, Justin.*

*Say, did you ever find out anything about the application for FY2006? It is rather insane that both the 2007 and 2008 applications have now been funded but the 2006 application is still held up. I would love to close the book on FY2006, and that is the only thing left outstanding.*

*Jennifer Carter  
E-Rate Specialist  
Trillion  
[www.trillion.net](http://www.trillion.net)  
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As can be seen by this example set of e-mails, communication between an incumbent service provider and that service provider's customer is taking place. These discussions are not marketing oriented discussions, but revolve around E-Rate.

The simple facts are that USAC approved Newton County School District's funding request in 2004, 2005, 2007 and 2008. This funding for 2006 was just approved on September 9, 2010, four and a half years after the school district's request, and well after 2007 and 2008 were approved.

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Newton County Funding History							
Funding Year	471 #	FRN	BEN	Service Provider	Commitment Status	SLD Commitment Amount	Wave #
2004	408636	1120544	128651	Trillion Partners, Inc.	Funded	\$39,375.00	13
2005	465246	1289592	128651	Trillion Partners, Inc.	Funded	\$39,375.00	38
2006	504134	1385200	128651	Trillion Partners, Inc.			
2007	578280	1600582	128651	Trillion Partners, Inc.	Funded	\$39,375.00	2
2008	622996	1724775	128651	Trillion Partners, Inc.	Funded	\$39,375.00	13

It would seem that in the four years that have followed that request for funding, a FCDL should have been issued. This is especially the case in light of the fact that years prior and post were approved.

In regards to the remaining set of communications, a team of people inside and outside of Trillion have reviewed all communication provided. Trillion can find no e-mail or other communication that would indicate that “show that Trillion had inside information regarding your needs and that Trillion influenced the procurement process.” As a matter of fact, Newton chose not to issue an RFP as is allowable under USAC rules and Mississippi law. Newton did file a Form 470# 956320000715085. It listed the following:

<p><b>What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at <a href="http://www.sl.universalservice.org">www.sl.universalservice.org</a> for examples. Check the relevant category or categories (8, 9, 10 and/or 11 below), and answer the questions in each category you select.</b></p> <p><b>8 <input checked="" type="checkbox"/> Telecommunications Services</b></p> <p><i>Do you have a Request for Proposal (RFP) that specifies the services you are seeking? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have an RFP, you risk denial of your funding requests.</i></p>		
<p><b>a <input type="checkbox"/> YES</b>, I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):</p> <p><input type="checkbox"/> the Contact Person in Item 6 or <input type="checkbox"/> the contact listed in Item 12.</p>		
<p><b>b <input checked="" type="checkbox"/> NO</b>, I have not released and do not intend to release an RFP for these services.</p> <p><b>Whether you check YES or NO</b>, you must list below the Telecommunications Services you seek. Specify each <b>service or function</b> (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at <a href="http://www.sl.universalservice.org">www.sl.universalservice.org</a> 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.</p>		
<p><b>c <input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.</b>      <input type="checkbox"/> Check this box if you prefer reimbursement after paying your bill in full.      <input type="checkbox"/> Check this box if you do not have a preference.</p>		
<p><b>Service or Function:</b></p> <p>Wireless connectivity between our central office and 3 schools with licensed radios.</p> <p>Voice-over-IP service for all of our schools and central office</p>		<p><b>Quantity and/or Capacity:</b></p> <p>100 Mbp</p> <p>200 lines</p>

Since there was no RFP and the Form 470 issued used language derived from USAC's own Eligible Services List, the bid process was open to a very large number of vendors. As a matter of fact, Trillion is aware of a minimum of 4 wireless service providers that could have bid this project that are either from the state Newton resides or an adjacent state. Also, in regards to VoIP, Trillion is aware of countless VoIP vendors that could have provided a bid on this Form 470.

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**Also, we found no examples of communication between Trillion and Newton County Schools that outlines their procurement process.**

In summary, this applicant'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, the customer's actions did not, in any way whatsoever, improperly affect the competitive bidding process.

It would be a travesty if this application were to be denied based upon a retroactive application of the new rule defined in the FCC Sixth Report and Order, and communication between an incumbent service provider and their customer regarding an E-Rate process unfunded even though the 2 years prior were approved by USAC and the two years after were also approved by USAC. 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)

Cc:

Ron Reich, Intel Capital  
Peter Pitsch, Intel

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

Name of Billed Entity: NEWTON COUNTY SCHOOL DISTRICT  
Billed Entity Address: 15305 HIGHWAY 15 N  
Billed Entity City: DECATUR  
Billed Entity State: MS  
Billed Entity Zip Code: 39327  
Billed Entity Number: 128651  
Contact Person's Name: Justin Mills  
Preferred Mode of Contact: EMAIL  
Contact Information: jmills@newton.k12.ms.us  
Form 471 Application Number: 685420  
Funding Request Number: 1875811  
Funding Status: Not Funded  
Category of Service: Telecommunications Service  
Form 470 Application Number: 956320000715085  
Contract Number: SA-091208-001223  
Billing Account Number: 601-635-2317  
Service Start Date: 07/01/2009  
Contract Expiration Date: 06/30/2014  
Number of Months Recurring Service Provided in Funding Year: 12  
Annual Pre-Discount Amount for Eligible Recurring Charges: \$57,540.00  
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00  
Pre-Discount Amount: \$57,540.00  
Applicant's Discount Percentage Approved by SLD: 75%  
Funding Commitment Decision: \$.00 - Bidding Violation  
Funding Commitment Decision Explanation: DR1: 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 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. <><><><><> DR2: This FRN is 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.

FCDL Date: 12/08/2010  
Wave Number: 075  
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011