

EXHIBIT 2

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

FACSIMILE

(202) 342-8451

www.kelleydrye.com

DIRECT LINE: (202) 342-8640

EMAIL: ckoves@kelleydrye.com

December 6, 2010

DATE STAMP & RETURN

VIA HAND DELIVERY

FILED/ACCEPTED

DEC 6 2010

Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *In the Matter of Request for Review by the Northeast Texas Regional Education Telecommunications Network of Decision of the Universal Service Administrator, CC Docket No. 02-6*

Dear Ms. Dortch:

The Northeast Texas Regional Education Telecommunications Network ("NTRETN" or "Applicant"), by its attorneys, and pursuant to Sections 1.51 and 54.722 of the Federal Communications Commission's ("Commission's" or "FCC's") Rules, 47 C.F.R. §§ 1.51, 54.722, hereby submits an original and four (4) copies and one (1) duplicate copy of the above-referenced Request for Review of Decision of the Universal Service Administrator ("Request"). Please date-stamp the duplicate copy of this filing and return it in the envelope provided to the courier.

Please feel free to contact the undersigned at 202.342.8640 or via email at ckoves@kelleydrye.com if you have any questions. Thank you very much.

Sincerely,



Christopher S. Koves
Counsel to the Northeast Texas Regional
Education Telecommunications Network
(NTRETN)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Request for Review by the Northeast Texas)	
Regional Education Telecommunications)	CC Docket No. 02-6
Network of Decision of the Universal Service)	
Administrator)	

**REQUEST FOR REVIEW OF DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR**

Steven A. Augustino
Christopher S. Koves
KELLEY DRYE & WARREN LLP
3050 K Street, NW, Suite 400
Washington, D.C. 20007-5108
Telephone: 202.342.8400
Facsimile: 202.342.8452
Email: saugustino@kelleydrye.com
Email: ckoves@kelleydrye.com

*Counsel to Northeast Texas Regional Education
Telecommunications Network*

Date: December 6, 2010

SUMMARY

This appeal is one of dozens recently before the Commission involving service provider Trillion Partners, Inc. (“Trillion”). NTRETN, a consortium of non-profit public school districts, selected Trillion in 2004 to build a state-of-the-art wireless wide area network (“WAN”) connecting its 51 rural school districts to the Internet. Over the course of the next six years, Trillion constructed, from scratch, a network that now provides 10-100 Mbps Internet access, voice-over-Internet-Protocol (“VoIP”) telephony and video conferencing to school districts that would not have such services, but for the Universal Service Fund.

Despite these undeniable benefits to the children of Northeast Texas, USAC now seeks to deny funding in 2009, based on a nominal amount of alleged “gifts” made by Trillion to a NTRETN representative. NTRETN showed USAC that the “gifts” were legitimate reimbursement permissible under applicable rules, such as reimbursement for expenses related to attendance at Trillion customer conventions. As shown in this appeal, NTRETN followed proper E-rate rules in selecting Trillion and in its dealings with the service provider over the years. USAC’s denial of funding is contrary to law and threatens the viability of a network that clearly serves the goals of the Universal Service program.

NTRETN seeks *de novo* review of USAC’s funding commitment decision denying E-rate funding for FY 2009. First, NTRETN seeks *de novo* review of USAC’s unjustified interpretation of the Commission’s competitive bidding rules.¹ USAC erroneously applied federal gift standards to prior time periods when the Commission did not adopt use of the rules until September 2010. Second, NTRETN seeks *de novo* review of USAC’s novel assertion

¹ See 47 C.F.R. § 54.504.

that ordinary contacts during the course of a multi-year relationship and nominal “gifts” are inconsistent with the Commission’s competitive bidding rules. The Commission should affirm that contacts between applicants and service providers in the context of multi-year contractual relationships do not undermine a fair and open competitive bidding process. Similarly, the Commission should find that nominal “gifts” such as reimbursement for travel and meals related to the provision of E-rate services do not implicate the Commission’s competitive bidding rules.

Because NTRETN’s contacts with Trillion were permissible and did not undermine the competitive bidding process, USAC’s E-rate funding decision regarding NTRETN’s FY 2009 should be reversed by the Commission. The Commission should remand this matter to USAC for further action consistent with the Commission’s rules and opinion.

TABLE OF CONTENTS

	Page
I. BACKGROUND	2
A. Northeast Texas Regional Education Telecommunications Network	2
B. NTRETN's Wireless Wide Area Network	3
C. USAC's FY 2009 Funding Commitment Decision Letter.....	4
II. ARGUMENT	5
A. <i>De Novo</i> Standard of Review.....	5
B. USAC Improperly Denied Funding Based on An Inapplicable Gift Standard	6
C. Contacts with Existing Service Providers Do Not Implicate Fair and Open Competitive Bidding.....	8
1. An Applicant's Contacts with its Existing Service Provider Are Permissible.....	9
2. Nominal "Gifts" Do Not Implicate FCC's Competitive Bidding Rules	10
III. CONCLUSION.....	11

Before the
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Washington, D.C. 20554

_____)	
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Request for Review by the Northeast Texas)	
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Network of Decision of the Universal Service)	
Administrator)	
_____)	

**REQUEST FOR REVIEW OF DECISION OF THE
UNIVERSAL SERVICE ADMINISTRATOR**

The Northeast Texas Regional Education Telecommunications Network (“NTRETN” or “Applicant”), by its attorneys, and pursuant to Sections 54.719(c), 54.720 and 54.721 of Federal Communications Commission’s (“Commission’s” or “FCC’s”) Rules, 47 C.F.R. §§ 54.719(c), 54.720 and 54.721, hereby requests *de novo* review of a Funding Commitment Decision Letter issued by the Universal Service Administrative Company (“USAC”) regarding NTRETN’s Funding Year (“FY”) 2009 schools and libraries universal support mechanism commitments (“FCDL”).² The FCDL was issued to NTRETN on October 6, 2010 and therefore this appeal is filed within the requisite 60 day time period pursuant to 47 C.F.R. §§ 54.720(a), 1.4(j).

² Funding Commitment Decision Letter from the Schools and Libraries Division, Universal Service Administrative Company, to David Mabe, NTRETN Texas Regional Education Telecommunications Network (dated October 6, 2010), attached hereto as Exhibit 1 (“FCDL”). The following E-rate funding request numbers (FRNs) were denied funding by USAC: 1837107, 1837122, 1837122, 1837138, 1875545, 1875591.

I. BACKGROUND

A. Northeast Texas Regional Education Telecommunications Network

NTRETN is a consortium of 51 non-profit public school districts located primarily in northeast Texas and a state-constituted educational service center created to support those school districts. NTRETN was created on April 14, 1997 and is governed by a 12 member Board of Directors (“the Board”), which consists of member school district superintendents. The consortium’s mission is to “plan, coordinate and facilitate the cooperative development and operation of a regional integrated telecommunications network [and]...to contribute to improved student learning and the overall educational development of the region...”³

The school districts that comprise NTRETN cover more than 5,000 square miles of northeast Texas and serve more than 150 schools and 150,000 students.⁴ The consortium comprises small rural, school districts that individually lack the resources on their own to deploy high-bandwidth broadband Internet for educational purposes. Over the life of the consortium, NTRETN’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. The majority of the consortium’s school districts receive support for half or more of their students through the National School Lunch Program, which is designed to provide free lunches to qualifying low income students.⁵

³ See Letter from Steve Augustino, Counsel to NTRETN, to Pina Portonova, USAC Schools and Libraries Division, at 3, attached hereto as Exhibit 2 (hereinafter “NTRETN Response”).

⁴ See NTRETN Response, at 2.

⁵ See FCC Form 471, *Schools and Libraries Universal Service Description of Services Ordered and Certification Form 471*, Form 471 Application No. 669497.

B. NTRETN's Wireless Wide Area Network

NTRETN is an example of the success of the Schools and Libraries program of the Universal Service Fund. NTRETN relied upon E-rate funding to construct a wireless wide area network providing its schools with Internet access, conferencing and telecommunications services. But for the E-rate funding, NTRETN would not have been able to afford the services it has now. Indeed, prior to its E-rate applications, NTRETN member schools were served via T1 links providing a *total* bandwidth to the Internet of 1.54 Mbps shared by all member schools.⁶ As a result of E-rate funding, *each* district in the consortium now receives a total bandwidth connection of 10 to 100 Mbps and 335 MB of total bandwidth.⁷ Individual schools now have a minimum bandwidth of at least 28 Mbps.⁸ 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.⁹

⁶ See NTRETN Response, at 3.

⁷ *Id.* at 4.

⁸ See 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.districtadministration.com/viewarticlepf.aspx?articleid=392> (last visited July 14, 2010).

⁹ See "Wireless WAN creates new learning opportunities: NTRETN 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).

C. USAC's FY 2009 Funding Commitment Decision Letter

By the FCDL dated October 6, 2010, USAC's Schools and Libraries Division denied NTRETN's FY 2009 E-rate funding requests in the amount of \$1,769,542.39 requested in its FCC Form 471 Application 669487. The reason given by USAC for denial of each Funding Request Number included in Form 471 Application 669497 was:

This FRN is denied because the documents provided by you and/or your vendor indicated 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 indicated 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.

This bare explanation is the *entirety* of the analysis provided by USAC. USAC does not identify any specific gifts, meals, gratuities or entertainment alleged to have been provided to NTRETN. Instead, upon counsel's request for this information, USAC referred only to a preliminary Intent to Deny letter, which was issued *before* NTRETN provided the facts and legal analysis relevant to this determination. As a result of USAC's failure to identify specific gifts, NTRETN is unable to limit its appeal to specific instances that may be at issue. Instead, NTRETN demonstrates below that USAC's concern with "gifts" generally is unlawful and without merit on the facts.

II. ARGUMENT

A. De Novo Standard of Review

The Commission's rules require the Commission to review, *de novo*, any request for review of a decision of the USAC Administrator.¹⁰ Unlike appellate review of FCC decisions, no deference is due to USAC or its conclusions in issuing its funding decision. The FCC has stated repeatedly that USAC is authorized only to act as an administrator of the E-rate program. The Commission's rules caution that the USAC "Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress."¹¹

Furthermore, this case involves issues of first impression before the Commission. Specifically, there are two novel issues the Commission should address concerning its requirement that a competitive bidding process be "fair and open." USAC has improperly denied funding based on erroneous conclusions that contacts between NTRETN and its service provider over the course of a multi-year contract undermined the annual competitive bidding process conducted by the consortium. USAC's legal and factual analysis of these novel questions is not entitled to deference under FCC rules. Instead, the Commission must determine on the merits of what is presented: (1) whether contacts between E-rate applicants and service providers that have entered multi-year service contracts implicate the Commission's competitive bidding rules ensuring fairness and openness free from conflicts of interest; and (2) whether nominal "gifts" from E-rate service providers to applicants implicate the Commission's competitive bidding rules.

¹⁰ 47 C.F.R. § 54.723.

¹¹ 47 C.F.R. § 54.702(c).

B. USAC Improperly Denied Funding Based on An Inapplicable Gift Standard

USAC's FCDL does not identify the exact basis for denial in this instance. To the best of counsel's knowledge, based on counsel's discussions with USAC, however, USAC has attempted to apply an inapplicable federal gift standard to contacts occurring during the relevant period. USAC dresses this federal gift standard up in the guise of a violation of the competitive bidding rules. However, as shown below, no federal gift standard applied.

At the time NTRETN applied for FY 2009 E-rate funding, the Commission had not applied federal gift standards to E-rate applicants.¹² 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.¹³ 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.¹⁴ The FCC's rules require only a few specific bidding procedures designed to ensure a competitive bidding process. These rules require the applicant: (1) to develop a technology plan; (2) to seek competitive bids; and (3) to complete the required application forms.¹⁵ Further, the applicant must consider all bids before

¹² See In the Matter of Schools and Libraries Universal Support Mechanism, A National Broadband Plan For Our Future, *Sixth Report & Order*, CC Docket No. 02-6, GN Docket No. 09-51, FCC 10-175 (rel. Sept. 28, 2010), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1001/FCC-10-175A1.doc (last visited September 30, 2010) ("*Sixth R&O*").

¹³ 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).

¹⁴ 47 C.F.R. § 54.504(a).

¹⁵ See 47 C.F.R. § 54.504.

entering a service contract and select the most-cost effective service offering with price being the primary factor.¹⁶

Section 54.504(a) states that applicants must comply with “these competitive bid requirements” in order to receive funding. No other bid requirements were identified in Section 54.504(a). Clearly, if additional requirements applied, such as federal gift standards, those requirements would have had to be specified in the applicable rules.

In short, the *only* FCC competitive bidding rules applicable to NTRETN’s FY 2009 E-rate funding are those adopted in 47 C.F.R. § 54.504(a), which are procedural in nature. Nothing in the Commission’s rules at the time NTRETN applied for FY 2009 E-rate funding incorporates, references or applies additional *federal* gift standards to the competitive bid process.

The Commission’s recent *Sixth Report & Order* modifies the E-rate application process going forward, but does not apply in this case. On September 28, 2010, the Commission released its *Sixth Report & Order* that adopts a number of the proposals put forward in the *Notice of Proposed Rulemaking*,¹⁷ including safeguards against waste, fraud and abuse by codifying the

¹⁶ 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).

¹⁷ In the Matter of Schools and Libraries Universal Support Mechanism, A National Broadband Plan For Our Future, *Notice of Proposed Rulemaking*, CC Docket No. 02-6, GN Docket No. 09-51, 25 FCC Rcd 6872 (2010), *available at* http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db0902/FCC-10-83A1.doc (last visited September 30, 2010).

requirement of a “fair and open” competitive bidding process.¹⁸ In the *Sixth Report & Order*, the Commission also, for the first time, applies federal gift standards applicable to federal agencies to gifts accepted under the E-rate program, permitting only *de minimis* gifts.¹⁹

The Commission amends its E-rate competitive bidding rules to create a new provision, 47 C.F.R. § 54.511(d)(1). This provision prohibits E-rate applicants from directly or indirectly accepting a “gift, gratuity, favor, entertainment, loan, or any other thing of value” from a service provider participating in or seeking to participate in the schools and libraries universal service program.²⁰ Such a new rule would not be required if the Commission already had applied federal gift standards to E-rate applicants, as USAC’s FCDL incorrectly assumes. The Commission cannot retroactively apply the federal gift standards to NTRETN’s FY 2009 E-rate funding requests. Therefore, federal gift standards should not apply to NTRETN’s FY 2009 E-rate funding commitments, however they do provide a framework for E-rate applicants going forward.

C. **Contacts with Existing Service Providers Do Not Implicate Fair and Open Competitive Bidding**

In the end, USAC is attempting to shoehorn a denial into the construct of the “fair and open competitive bidding process.” USAC’s application of this standard to the facts is entirely without analysis and, as shown below, is devoid of any legitimate policy or legal precedent. Instead, USAC has attempted to make policy or interpret unclear provisions of the status and the Commission’s rules. This it may not do.²¹ Moreover, the facts of this case show

¹⁸ *Sixth R&O*, FCC 10-175 ¶ 6.

¹⁹ *Id.* ¶ 88.

²⁰ *Id.* ¶ 88-89.

²¹ 47 C.F.R. § 54.702(c).

that the contacts and alleged “gifts” relied upon by USAC do not implicate the fairness of the competitive bidding process conducted by NTRETN.

1. An Applicant’s Contacts with its Existing Service Provider Are Permissible

An applicant’s contacts with an existing service provider do not necessarily implicate the Commission’s fair and open competitive bidding rules. Applicants that enter multi-year contracts with a service provider must maintain contacts to ensure proper coordination and implementation of E-rate-funded programs. It would be literally impossible for an applicant to avoid any contact whatsoever with the service provider it has chosen in a previous year’s bid. In NTRETN’s case, the consortium had to work with the service provider to build, from scratch, a wireless network spanning thousands of square miles with dozens of access points. NTRETN was engaged in these contacts back to 2004 when the initial multi-year contract was signed. Any reasonable reading of the Commission’s bidding rules must allow the school district to work with those entities with whom it has contracted to provide the services supported by the Fund.

Not only are such contacts *permissible*, they should be *encouraged*. To discourage contacts and coordination between applicants and service providers is contrary to the goals of Universal Service and the E-rate program – namely, to spread Internet access to schools and libraries to help educators, students, and parents meet the challenges in education and life-long learning.²² As previously stated, NTRETN entered a multi-year contract with the service provider Trillion to build a complex wireless WAN from scratch. Coordination between applicants and service providers with the technical expertise to build and maintain a network is essential to ensure that students and educators have access to Internet and communications

²² See *Sixth R&O*, FCC 10-154 ¶¶ 1-2.

systems that *work*. Efficient management of NTRETN's wireless WAN required ongoing coordination between NTRETN and Trillion. For example, efficient coordination between NTRETN and its service provider included meetings and working lunches discussing network maintenance, as well as attending conferences for the purpose of improving the service provider's customer service and network reliability.

2. Nominal "Gifts" Do Not Implicate FCC's Competitive Bidding Rules

Similarly, nominal "gifts" provided over the course of a multi-year relationship do not implicate the Commission's competitive bidding rules. The few travel and meal reimbursements received by NTRETN were not provided as a personal benefit to NTRETN personnel, but rather were accrued in connection with the performance of official duties to manage the consortium's wireless WAN and coordinate with the service provider. For example, NTRETN representatives received travel and meal expenses from the service provider to attend a customer summit addressing the service provider's customer service and reliability issues.²³ However, the conference NTRETN's representatives attended is precisely the type of conference the federal rules not only allow but sought to encourage.²⁴ It would be counter-productive and contrary to the policy goals of the E-rate program to prohibit E-rate funded schools from attending conferences that actually seek to improve E-rate services and ensure the exchange of "best practices." Prohibiting reimbursement would discourage applicants from attending such beneficial meetings and conferences.

²³ See NTRETN Response at 16-17.

²⁴ See 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).

Additionally, nominal gifts should not implicate the FCC's competitive bidding rules. Collectively, the alleged "gifts" in this instance amounted to a few hundred dollars in reimbursements over a span of six years. It strains credulity to contend that a school district would alter its decisions on a multi-million dollar project based on a handful of small reimbursements for travel, meals or related entertainment. Nominal reimbursement for meals provided during the course of a meeting discussing network maintenance of E-rate-funding projects do not implicate competitive bidding rules but rather are part of the realities of professional interaction. For example, the meals that it appears USAC relied upon occurred during working lunches and meetings discussing NTRETN's network maintenance.²⁵ Such activities facilitated the implementation of the services previously contracted by the consortium. No one would reasonably question NTRETN's independence in future solicitations based on such activities.

III. CONCLUSION

NTRETN has achieved great success in developing a network to spread the educational benefits of Internet access to students in northeast Texas – all thanks to funding provided through the E-rate program. Since, 2004 NTRETN has applied for over \$8 million in E-rate funding, \$1,769,542.39 in FY 2009 alone, and has put this funding to good use by enriching the lives of students and school administration with a robust wireless WAN. Now, after NTRETN has put this funding to good use, USAC wants to deny NTRETN this funding – for alleged gifts of nominal amounts. Denial of NTRETN's E-rate funding does not serve the goals of Universal Service and would severely financially cripple the schools and school districts that are members of NTRETN. The ultimate effect of a funding denial would be to hinder

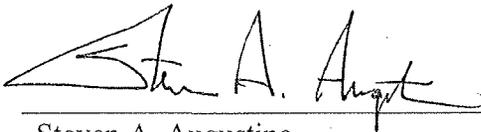
²⁵ See NTRETN Response at 15.

student access to the educational benefits of high-speed Internet access. In sum, USAC is willing to throw out all the good achieved by NTRETN based on a narrow, tortured, interpretation of “gifts” and competitive bidding rules.

For the foregoing reasons, NTRETN respectfully requests the Commission to reverse USAC’s 2009 E-rate application funding denial and remand to USAC for further action consistent with the Commission’s ruling.

Respectfully submitted,

**NORTHEAST TEXAS REGIONAL
EDUCATION TELECOMMUNICATIONS
NETWORK**



Steven A. Augustino
Christopher S. Koves
KELLEY DRYE & WARREN LLP
3050 K Street, NW, Suite 400
Washington, D.C. 20007-5108
Telephone: 202.342.8400
Facsimile: 202.342.8452
Email: saugustino@kelleydrye.com
Email: ckoves@kelleydrye.com

Its Attorneys

Date: December 6, 2010

CERTIFICATE OF SERVICE

I, Christopher S. Koves, hereby certify that on December 6, 2010 I served a true and correct copy of the foregoing Request for Review of Decision of the Universal Service Administrator on the following parties via U.S. first class mail:

Universal Service Administrative Company
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, NJ 07054-0685

Letters of Appeal
Universal Service Administrative Company
Schools and Libraries Division – Correspondence Unit
100 S. Jefferson Road
P.O. Box 902
Whippany, NJ 07981



Christopher S. Koves

EXHIBIT 1



FUNDING COMMITMENT DECISION LETTER
(Funding Year 2009: 07/01/2009 - 06/30/2010)

October 6, 2010

David Mabe
Northeast Texas Regional Education Telecommunications Network (N)
2230 N. Edwards
Mt. Pleasant, TX 75456

Re: Form 471 Application Number: 669497
Billed Entity Number (BEN): 150217
Billed Entity FCC RN: 0011959871
Applicant's Form Identifier: 2008-471-1

Thank you for your Funding Year 2009 application for Universal Service Support and for any assistance you provided throughout our review. The current status of the funding request(s) in the Form 471 application cited above and featured in the Funding Commitment Report(s) (Report) at the end of this letter is as follows.

- The amount, \$1,769,542.39 is "Denied."

Please refer to the Report following this letter for specific funding request decisions and explanations. The Universal Service Administrative Company (USAC) is also sending this information to your service provider(s) so preparations can begin for implementing your approved discount(s) after you file FCC Form 486, Receipt of Service Confirmation Form. A guide that provides a definition for each line of the Report is available in the Reference Area of our website.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
- Review technology planning approval requirements
- Review CIPA requirements
- File Form 486
- Invoice USAC using the Form 474 (service provider) or Form 472 (Billed Entity applicant) - as products and services are being delivered and billed

TO APPEAL THIS DECISION:

You have the option of filing an appeal with the SLD or directly with the Federal Communications Commission (FCC).

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,
 - Applicant BEN and Service Provider Identification Number (SPIN),
 - Form 471 Application Number 669497 as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2009," AND
 - The exact text or the decision that you are appealing.

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to USAC by fax, fax your appeal to (973) 599-6542.

To submit your appeal to USAC on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Road
P.O. Box 902
Whippany, NJ 07981

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-5 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

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: 1837107
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 160720000607817
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: Trillion WAN 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: 01/25/2007
Contract Expiration Date: 06/30/2016
Shared Worksheet Number: 1083523
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$633,240.84
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$240,000.00
Pre-discount Amount: \$873,240.84
Discount Percentage Approved by the USAC: 73%
Funding Commitment Decision: \$0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: At the applicant's request, EDUCATION
SERVICE CENTER - REGION 8 was added to the Form 471 application, resulting in no
change in funding. <><><><><> 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

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: 1837122
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 160720000607817
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: Trillion WAN B
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: N/A
Contract Award Date: 01/25/2007
Contract Expiration Date: 06/30/2016
Shared Worksheet Number: 1083523
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$678,472.32
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$369,000.00
Pre-discount Amount: \$1,047,472.32
Discount Percentage Approved by the USAC: 73%
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

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: 1837138
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
Shared Worksheet Number: 1083523
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$431,100.00
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$431,100.00
Discount Percentage Approved by the USAC: 73%
Funding Commitment Decision: \$0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: The FRN was modified from \$35,917/month to
\$35,925/month to agree with the applicant documentation. <><><><><> 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

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: 1875545
Funding Status: Not Funded
Category of Service: Telecommunications Service
Form 470 Application Number: 756270000637608
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: TX-NTRETN-011708-INET-AMEND-1936(Paris)
Billing Account Number: N/A
Multiple Billing Account Numbers: N
Service Start Date: 07/01/2009
Service End Date: N/A
Contract Award Date: 02/07/2008
Contract Expiration Date: 06/30/2014
Shared Worksheet Number: 1083523
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-discount Amount for Eligible Recurring Charges: \$63,906.36
Annual Pre-discount Amount for Eligible Non-recurring Charges: \$.00
Pre-discount Amount: \$63,906.36
Discount Percentage Approved by the USAC: 73%
Funding Commitment Decision: \$0.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: At the applicant's request, EDUCATION
SERVICE CENTER - REGION 8 was added to the Form 471 application, resulting in no
change in funding. <><><><><> 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.
ECDL Date: 10/06/2010
Wave Number: 069
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

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.
ECDL 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
2230 N. Edwards
Mt. Pleasant, TX 75456

EXHIBIT 2

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

STEVEN A. AUGUSTINO

DIRECT LINE: (202) 342-8612

EMAIL: saugustino@kelleydrye.com

NEW YORK, NY

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

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").

Ms. Pina Portanova
July 30, 2010
Page 2

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

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

Ms. Pina Portanova
July 30, 2010
Page 3

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*

<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.

Ms. Pina Portanova
July 30, 2010
Page 4

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 network¹⁶ – 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

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.districtadministration.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.

Ms. Pina Portanova
July 30, 2010
Page 5

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

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.

Ms. Pina Portanova
 July 30, 2010
 Page 6

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				\$1,774,329.26²⁸	
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 471 Application Number 829880000573553, 471 Application Number 497054, FRN 1472812 in the amount of \$3,960.00, which was not received.

Ms. Pina Portanova

July 30, 2010

Page 7

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				\$1,769,472.31²⁹
2010	Total	950030000800033	752417	2043353	\$46,350.00
	Total				\$46,350.00³⁰

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

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.

Ms. Pina Portanova
July 30, 2010
Page 8

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.

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.

Ms. Pina Portanova
July 30, 2010
Page 9

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

³⁶ Mabe Dec. ¶21.

³⁷ Mabe Dec. ¶29.

³⁸ *Id.*

³⁹ FCC Form 470 Application No. 160720000607817.

Ms. Pina Portanova
July 30, 2010
Page 10

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

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).

Ms. Pina Portanova
July 30, 2010
Page 11

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.

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.

Ms. Pina Portanova

July 30, 2010

Page 12

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.

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.

Ms. Pina Portanova
July 30, 2010
Page 13

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 &

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.

Ms. Pina Portanova
July 30, 2010
Page 14

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

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).

Ms. Pina Portanova

July 30, 2010

Page 15

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

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.

Ms. Pina Portanova
July 30, 2010
Page 16

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

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).

Ms. Pina Portanova
July 30, 2010
Page 17

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.

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.

Ms. Pina Portanova
July 30, 2010
Page 18

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

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).

Ms. Pina Portanova
July 30, 2010
Page 19

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,

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.

KELLEY DRYE & WARREN LLP

Ms. Pina Portanova
 July 30, 2010
 Page 20

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 2010⁸²; 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				\$46,350.00⁸³

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”).

Ms. Pina Portanova
July 30, 2010
Page 21

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.

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”).

Ms. Pina Portanova
July 30, 2010
Page 22

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.

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).

Ms. Pina Portanova
July 30, 2010
Page 23

Northeast's Form 470s and Form 471s were either completed by Northeast Board members or Northeast's E-rate consultant Jill Duncan, who is not a Trillion employee.⁹⁶

C. Northeast Did Not Signal that Trillion Would be Awarded the Contract

In your letter, you allege that before bids were even submitted and the selection made, Northeast signaled that it would award the contract to Trillion. First, without specific information regarding the factual basis for your allegation, Northeast cannot provide a comprehensive response. As Mr. Mabe attests in his declaration, at no time prior to FY 2006 did Mr. Mabe signal to Trillion (or anyone else) that Trillion would be awarded the contract.⁹⁷

D. Northeast Did Not Dissuade Other Potential Bidders

In your letter, you alleged that after Trillion invested in northeast Texas, other vendors were "dissuaded" from bidding. More specifically, you assert that Mr. Mabe was actively encouraging other districts to go with a specific provider, working with Trillion and appeared not open to other potential bidders. However, *Northeast* did not dissuade other vendors from bidding nor did *Northeast* encourage other districts to go with Trillion. In his capacity as coordinator for Northeast, Mr. Mabe did entertain inquiries from other potential bidders during the bid windows in question.⁹⁸ As Mr. Mabe declares, he explained the consortium's needs and the Form 470 technical specifications. Each potential bidder chose for its own reasons not to submit a competitive bid.

It is not surprising, given the geographic region and the general lack of telecommunications competition, that potential bidders may not have found it economically feasible to submit competing bids. Indeed, Mr. Mabe speculates that at least some potential bidders may have been dissuaded from bidding by the significant upfront build-out costs required to construct a wireless WAN. Since Northeast was under an existing contract to receive wireless WAN services from Trillion, and Trillion owned the existing network and the related equipment, the vendor would have either had to build out a new network or purchase space on Trillion's poles.⁹⁹ However, network economics, not Mr. Mabe's contacts with Trillion, would appear to be the driving factors in such cases.

⁹⁶ Mabe Dec. ¶10.

⁹⁷ Mabe Dec. ¶¶ 20, 29.

⁹⁸ Mabe Dec. ¶ 20 (noting that for FY 2006, Mr. Mabe spoke with one vendor other than Trillion regarding the Form 470 posting); *Id.* ¶ 27 (noting that for FY 2007 Mr. Mabe did not receive any inquiries other than from Trillion); *Id.* ¶ 29 (same); *Id.* ¶ 35 (Mr. Mabe could recall two or three phone calls between 2004 and 2009 from other potential bidders to inquire about the services Northeast requested).

⁹⁹ Mabe Dec. ¶ 20.

Ms. Pina Portanova
July 30, 2010
Page 24

Importantly, USAC may not draw the conclusion that Northeast's bidding process was flawed merely because Northeast only received one bid. The Commission has previously held that the fact that an applicant received only one bid (or no bids, for that matter) does not disqualify it from receipt of e-rate funding.¹⁰⁰ In *Winston-Salem/Forsyth County School District*, the Commission granted an appeal where the applicant followed the Commission's prescribed procedures but only received one bid. The Commission held that the decision by the applicant was no different than the "thousands" of applicants that receive no bids, or only bid, in response to a Form 470.¹⁰¹ The FCC's rules require applicants to seek competitive bids, not to have competing bidders where there are none.¹⁰² Accordingly, the fact that an applicant received only one bid, "without more, cannot be the basis for denying [an applicant's] request for review."¹⁰³

IV. RESPONSES TO ADDITIONAL USAC QUESTIONS

In your letter you also request additional information from Northeast. Please see the Appendix, attached hereto, which addresses the additional questions in your letter.

V. CONCLUSION

I hope that this additional information addresses the concerns you raised in your June 4, 2010 letter to Northeast and that USAC will approve Northeast's E-rate funding requests. Northeast has at all times engaged in a fair and open competitive bidding process free from

¹⁰⁰ See, In the Matter of Request for Review of the Decision of the Universal Service Administrator by Keyport School District, Schools and Libraries Universal Support Mechanism, *Order*, File No. SLD-388346, CC Docket No. 02-6, DA 09-2241, 24 FCC Rcd 12702 ¶1(2009).

¹⁰¹ In the Matter of Request for Review of the Decision of the Universal Service Administrator by Winston-Salem/Forsyth County School District, *et al*, Schools and Libraries Universal Support Mechanism, *Order*, CC Docket No. 02-6, DA 03-314, 18 FCC Rcd 26457, 26462 ¶14 (2003).

¹⁰² *Id.* at 26462 ¶14.

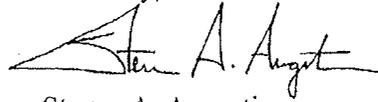
¹⁰³ *Id.* at 26462 ¶14.

KELLEY DRYE & WARREN LLP

Ms. Pina Portanova
July 30, 2010
Page 25

conflicts of interest, in compliance with FCC rules. Please feel free to contact me if you have any questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is written in a cursive style with a large initial "S".

Steven A. Augustino

*Counsel to Northeast Texas Regional Education
Telecommunications Network*

SAA:pab

Enclosures

APPENDIX
ADDITIONAL QUESTIONS IN
USAC JUNE 4, 2010 LETTER

1. Amount Northeast Would Like Amortized

QUESTION: For each FRN where the WANs were applied for separately, and the services requested include service provider equipment costs, and/or an upfront or non-recurring (one-time) charge for capital investment by the service provider that is equal to or greater than \$500K please provide amortization information. Please send a signed written response as to how many years you would like to amortize this cost.

RESPONSE: In response to your request, if USAC combines WAN A and B, Northeast would like to amortize the infrastructure costs for WAN A and WAN B over a three year period.

2. List of Schools Who Agreed to Purchase VoTN Services

QUESTION: Please provide a list of the schools, by Fund Year, who agreed to purchase the VoTN services prior to the filing of the Form 471.

RESPONSE: In response to your request, the following is a list of school districts who agreed to purchase the VoTN services. This list also includes the date the final contract was signed with the service provider and the school district to provide VoTN services. Please note that the schools may have agreed to purchase VoTN services at an earlier date, prior to when the contract was finalized. VoTN services were available to all schools within Northeast's WAN.

<u>District</u>	<u>Date Signed</u>
Chapel Hill Independent School District	12/13/2007
Chapel Hill Independent School District (2)	2/7/2008
Chapel Hill Independent School District (3)	1/15/2009
Clarksville Independent School District	5/31/2007
Daingerfield-Lone Star Ind. School District	2/9/2009
Harts Bluff School District	9/9/2007
Jefferson Independent School District	2/2/2009
Maud Independent School District (1)	6/29/2007
Maud Independent School District (2)	1/22/2008
McLeod Independent School District	2/21/2008
North Lamar Independent School District (1)	6/29/2007
North Lamar Independent School District (2)	1/22/2008
North Lamar Independent School District (3)	2/21/2008
Pewitt Consolidated Ind. School District	6/29/2007

3. Trillion Not Involved in Fiscal Year 2010 Application

QUESTION: Please indicate if Trillion was involved in the development of the specifications sought on the Form 470 and subsequent contract awarded to Trillion. Please indicate if you intended to entertain bids and have a fair and open competitive bidding process or if the School District intended to select Trillion for this new contract without use of a fair and open competition. Please provide detailed support for your responses, including any supporting documentation you can provide. Furthermore, please also indicate if any gifts were offered or received, other than those indicated on the NTxRETN Expenses.pdf document (attached), during the time leading up to the award of this contract.

RESPONSE: In response to your request, Northeast confirms that Trillion was *not* involved in the development of the specifications sought on FY 2010 Form 470 for FRN 2043353 and the subsequent contract signed on February 4, 2010. For FY 2010, Northeast intended to and did in fact entertain bids and conduct a fair and open competitive bidding process.¹ As support for these propositions, please find attached a copy of the Form 470 that was posted to USAC's website for the requisite 28 day period.² Please note that Form 470 contains the requisite certification signed by Mr. Mabe that all bids will be carefully considered.³ Further, to the best of Mr. Mabe's and our knowledge and belief, no gifts were offered or received during the time leading up to the award of the contract.

¹ Mabe Dec. ¶ 38.

² Attached hereto as **Exhibit I**.

³ See 47 C.F.R. § 54.504(c)(1)(xi).

EXHIBIT A



Schools and Libraries Division

Date: June 4, 2010

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

Response Due Date: June 21, 2010

Dear Mr. Mabe:

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

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

Based on the documentation in your responses and the information provided by Trillion, your service provider, all FRNs committed for FY 2006, 2007 and 2008 will be rescinded because you did not conduct a fair and open competitive bid process free from conflicts of interest. The documentation you provided indicates that starting in 2005 and throughout your contractual relationship with Trillion, you were offered and accepted valuable gifts from the service provider. Specifically, Trillion provided meals, golf outings and travel. For yourself alone, total gifts by year were as follows: 2004 \$38.07; 2005: \$310.09; 2006: \$48.86; 2007: \$747.83; 2008 \$44.04. In both 2006 and 2008, a single meal exceeded \$20 per person and in 2005 and 2007, total gifts to one individual exceeded \$50. Finally, we note that according to Trillion's records, you did attend a dinner on 2/5/2008 at the Moonshine Bar and Grill, just prior to signing a contract with Trillion. (See NTxRETN Expenses.pdf and Receipt 400.pdf) The value of these gifts exceeds the federal gifts standards of \$20/person/occasion not to exceed \$50/person/per calendar year. Although these gifts may be acceptable under state law, the Federal Communications Commission has specifically determined that for another applicant in Texas that the offer and acceptance of gifts while allowable under Texas Penal Code does not mitigate the conflict of interest that is created when the you accepted the gifts, and therefore, you did not run a fair and open competitive bidding process, free from conflicts of interest as required by FCC rules. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

FCC rules require applicants to conduct a fair and open competitive bidding process free from conflicts of interest. See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-

21, Order, 19 FCC Rcd 6858, ¶ 60 (2003) (“Ysleta Order”); See also *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028-4032-33, ¶ 10 (2000); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 07-1270 (2007); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-449 (2008)(Caldwell Parish).

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

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

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

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

FCC rules require applicants to conduct a fair and open competitive bidding process free from conflicts of interest. See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-

21, Order, 19 FCC Rcd 6858, ¶ 60 (2003) (“Ysleta Order”); See also *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028-4032-33, ¶ 10 (2000); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 07-1270 (2007); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-449 (2008)(Caldwell Parish). Applicants cannot reveal to one prospective service provider information they do not provide to all. See Caldwell Parish, ¶ 16. Service providers are prohibited from filling out forms that require an applicant’s signature and the 470 must be complete by the entity that will negotiate with prospective service providers. See Caldwell Parish, ¶ 17.

Additionally, please provide responses to the following questions:

- In response to our question 5 regarding WAN A and WAN B, you state that Trillion recommended that you list separate the WANs in that manner. Based on your response, we will combine the two part of the WAN and which may result in service provider infrastructure costs requiring to be amortized. For each FRN where the WANs were applied for separately, and the services requested include service provider equipment costs, and/or an upfront or non-recurring (one-time) charge for capital investment by the service provider that is equal to or greater than \$500K please provide amortization information. Pursuant to the FCC’s “Brooklyn” decision, the costs must be amortized over at least a 3-year period. For additional information, see: <http://www.usac.org/si/applicants/step06/wide-area-network-fact-sheet.aspx#5>. Please send a signed written response as to how many years you would like to amortize this cost. The amortization will be modified on a straight-line basis, i.e., the same dollar amount each year. For example; if the cost is \$600K, it will be amortized for 3 years at \$200K each year.
- Based on the responses that you provided to USAC in question 4 you indicate that schools other than Sulphur Bluffs ISD were not aware of the VoIP/VoTN services which you applied for on their behalf. Therefore, we will need to rescind or deny funding for all other entities since they did not provide specific authorization to you to file for those services on their behalf. Please provide a list of the schools, by Fund Year, who agreed to purchase the VoTN services prior to the filing of the Form 471. Funding for those school that first heard about or agreed to the offering after the filing of the Form 471 will be rescinded and/or denied.
- Regarding FY 2010 Application 752417, FRN 2043353, USAC’s records indicate that this FRN is based on a contract signed 2/4/2010, and pursuant to the posting of Form 470 # 950030000800033, which was posted on 12/18/2009. Please indicate if Trillion was involved in the development of the specifications sought on the Form 470 and subsequent contract awarded to Trillion. Please indicate if you intended to entertain bids and have a fair and open competitive bidding process or if the School District intended to select Trillion for this new contract without use of a fair and open competition. Please provide detailed support for your

responses, including any supporting documentation you can provide. Furthermore, please also indicate if any gifts were offered or received, other than those indicated on the NTxRETN Expenses.pdf document (attached), during the time leading up to the award of this contract.

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

STATE OF TEXAS §
 §
COUNTY OF HOPKINS §

DECLARATION OF TOMMY LONG

My name is Thomas ("Tommy") Long. I am above the age of 18 years, have personal knowledge of the facts contained herein, and am competent to make this Declaration.

1. I am currently retired and work as an independent educational consultant.
2. Prior to my retirement I served as the superintendent of schools for the North Hopkins Independent School District for 21 years. I also served as a board member for the Northeast Texas Regional Education Telecommunications Network consortium (NETRETN or "the Consortium") for approximately 12 years.
3. In 1997, I was elected to serve as a director of the Consortium in the first year of organization and continued as a director until my retirement in 2009. In approximately 2002, I was elected as board chairman of the Consortium and served as chairman until my retirement in 2009.
4. The Consortium was formed by school districts located in northeast Texas in the late 1990's by 47 school districts and the Texas Region VIII Education Service Center ("Region VIII ESC"). The Consortium was organized to facilitate the development and delivery of a high-speed telecommunication network to serve member schools; to improve student learning and to improve the overall quality of education in a region that otherwise would not have access to advanced telecommunications services. Member school district superintendents met to form committees and discuss organization,

finance, and delivery of services. The Consortium was organized with a 12 member board of directors ("the Board"), elected based on the size of each school district, representing the 47 school districts and the Region VIII ESC. The Region VIII ESC executive director or his designee served as a board member. The Consortium is funded through district contributions based on student enrollment.

5. The Region VIII ESC is a member of the Consortium. The Region VIII ESC is one of twenty state Educational Service Centers created by the Texas legislature to assist Texas school districts with a variety of educational administrative needs, including (but not limited to) technology. Region VIII ESC has relationships established with each of the Consortium's member school districts and therefore was selected as fiscal agent by the Board. The Board worked with the Region VIII technology coordinator, which was Mr. Don Mellody until 2005 and then Mr. David Mabe until 2009.
6. The Consortium's member school districts operate in an area of Northeast Texas where consumers in general have limited telecommunications service and access. As a rural area, there is little to no competition to provide telecommunications services to consumers in the region. Consumers in the region are served by mainly small rural telephone companies and some satellite companies but there is virtually no cable or high-speed internet access available to consumers.
7. The Consortium's member school districts would be unable to access high-speed telecommunications services without the assistance of the E-rate

program. Consortium member school districts range in size from less than 100 to a little over 5,000 students. However, most of the schools served by the Consortium have less than 500 students. The Consortium serves schools receiving National School Lunch Program (NSLP) support for low-income students. Over 60% of the Consortium's member schools have half or more of their students qualifying for and receiving free or reduced lunches under the NSLP. NSLP support is as high as 100% for some member schools.

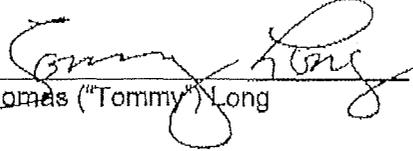
8. At the time the Consortium was formed most of the member school districts only had dial-up connectivity. The Consortium initially helped provide a T1 connection to each district with a wide area network (WAN) monitored from a central location. Many of the schools were served by small local telephone companies and had no other options. As bandwidth usage become greater in the earlier 2000s, the Board explored alternatives for delivery. The Board investigated providing more T1 and T3 wired (copper) circuits (where they were available), as well as wireless solutions.
9. The Board considered a wireless WAN as a viable option for service delivery considering the number of small rural member school districts with limited telephone service. Consequently, the Board decided to upgrade the Consortium's network with a wireless WAN. The Board sought to procure a wireless WAN following E-Rate bidding procedures and submitting funding requests to the Universal Service Administrative Company (USAC).

10. During my tenure on the Board, the Board solicited bids and requested funding through the E-rate program for wireless WAN services and upgrades to that network. The purpose was to provide a high-speed telecommunications network to serve students and school administrators.

11. Based on member school district's technology plans, the Board prepared and submitted FCC Form 470s between 2004 and 2009, explaining the technology needs of the Consortium and soliciting bids from service providers to provide those services. The Board would meet to consider bids received in response to the Form 470s for services under the E-Rate program. The primary consideration of the Board when it reviewed the bids was to procure for Consortium school districts the best possible network for the best price. Ultimately, every decision to upgrade and expand the wireless WAN was made by the Board alone. The Board approved the criteria for building the network and approved all contracts for its implementation.

12. As a former superintendent of a small rural Texas school district, I know personally that the NETRETN network has been an incredible upgrade for our students. The NETRETN Board is very proud of the NETRETN network. The network has allowed every student within the network to access educational experiences that simply would not have been possible prior to the development of the network. The network itself would not have been possible without E-Rate funding.

Signed under the penalty of perjury.


Thomas ("Tommy") Long

7-29-10
Date

EXHIBIT C

STATE OF TEXAS §
 §
COUNTY OF TITUS §

DECLARATION OF DAVID MABE

My name is David Mabe. I am above the age of 18 years, have personal knowledge of the facts contained herein, and am competent to make this Declaration.

1. I am currently owner of David Mabe Enterprises, LLC. ("DME"). Through DME I serve as a consultant to the Region VIII Education Service Center's TIPS/TAPS Purchasing Cooperative.
2. Prior to my work with DME, I served as the Deputy Executive Director of the Region VIII Education Service Center ("Region VIII ESC"). I assumed the role of Deputy Executive Director of the Region VIII ESC on August 1, 1995 and continued in that capacity until I retired in October of 2009.
3. The Northeast Texas Regional Education Telecommunications Network (NETRETN) was established in 1997; however, I was not involved with the consortium at that time.
4. NETRETN is a consortium of local school districts and the Region VIII Education Service Center. NETRETN was created through an interlocal agreement between the participating school districts and the Region VIII Service center.

5. The Region VIII ESC is a member of the consortium and serves as the fiscal agent for NETRETN. As the fiscal agent, the Region VIII ESC undertook the task of administering the NETRETN network. I took over as the Director of Network Services for the Region VIII ESC in 2002 which included my role as the coordinator of the NETRETN network. However, I was never an employee of NETRETN nor have I ever been an NETRETN board member.
6. The Region VIII Service Center is one of 20 statutorily created education service centers across Texas. Region VIII ESC provides a multitude of services to the school districts in its area. Region VIII ESC did not receive any fees for its services.
7. At the time I became involved with NETRETN, consortium members had available a typical telecommunications network for the time. It consisted of aggregated T-1 lines that went into a single hub, in Longview, Texas. Shortly after I became involved with NETRETN, we identified two major problems with the existing network:
 - a. The T-1 lines could not supply the school districts in the consortium with enough bandwidth. Most of the school districts in NETRETN are rural districts that did not have an alternative source of bandwidth; and

- b. The network was becoming cost prohibitive to the members of the consortium. Some of the schools in the consortium were on the Longview LATA and some were in the Dallas LATA. Because Longview was NETRETN's hub, the members had to pay very high DS3 charges to SBC (now AT&T) to get the data from the Dallas LATA to the network hub because SBC owned the lines.
8. In 2002 or 2003 we decided to seek alternate ways to get the data from Dallas to Longview. NETRETN met with several service providers and discovered that there were providers in the marketplace that could not only wirelessly transfer the data to Longview, but could also build an entire broadband infrastructure for the rural schools of Northeast Texas.
9. All of the school districts that comprised NETRETN at the time had technology plans in place. The NETRETN board members worked closely with the technology coordinators at each of the member school districts to amend their respective technology plans and to develop the needs and specifications for the new proposed network to ultimately seek E-Rate funding.
10. NETRETN also engaged the services of the Origin Group, specifically Jill Duncan, to assist NETRETN in developing its Form 470 for the construction

of the wireless broadband network for funding year 2004. Jill Duncan has served as NETRETN's E-Rate consultant for a number of years. 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.

11. As the network coordinator I was listed as the contact person on Form 470 application number 381790000479262 for funding year 2004 as well as the Forms 470 filed between 2004 and 2009. This Form 470 was posted with

USAC in accordance with the requirements and NETRETN kept its bidding

open for the requisite 28 days. NETRETN did not develop a separate

request for proposals (RFP) for any of the funding years.

12. During the 2004 bidding window, I met with two potential bidders to discuss NETRETN's requirements and ask questions, Trillion and SBC. SBC had recently built a wireless network for the Net-net consortium of colleges in the Northeast Texas Area and was interested in NETRETN's project. However, shortly before the bidding window closed, SBC contacted me and told me SBC would not be submitting a bid. Ultimately, NETRETN only received one bid, from Trillion, in response to Form 470 application number 381790000479262.

13. The NETRETN Board met and reviewed the proposal from Trillion. The price, which was the primary factor considered by the Board, was initially too high. However, the Board was able work with Trillion to achieve a better price. By negotiating a multi-year contract, the Board was able to afford to build the network from the ground up. The cost to NETRETN's members to receive internet service from the new broadband network was only 7-10% higher on average than the fees they were paying for NETRETN's old T-1 network. NETERETN could never have achieved such a low cost increase for the increased bandwidth without an initial multiyear contract.

14. NETRETN signed a five (5) year contract with Trillion in 2004 and construction began shortly thereafter. Under the contract, Trillion owns all of the transmission facilities and equipment, and NETRETN purchases the services from Trillion as a Priority 1 service. NETRETN has individual contracts with each member of NETRETN. In order for NETRETN to act on behalf of each member, each entity executes a letter of agency with NETRETN each year. The E-Rate funds were used to pay for the services purchased from Trillion.

15. Throughout the construction process and the first year of the contract I was in almost constant contact with representatives of Trillion. The network

encountered several service issues that required extensive troubleshooting. Many of the maintenance and troubleshooting occurred on individual campuses throughout the consortium. As the coordinator for the NETRETN network, I was the liaison between the NETRETN member school districts and our service provider and the owner of the infrastructure, Trillion. Therefore, I had to work closely with both Ken Proud, Trillion's Vice President for Construction, and my Trillion service contact, Dave O'Rourke.

16. While working closely with Trillion during the first year of the network we determined that many of our problems were related to redundancy issues and some links needed to be added and some needed to be closed. We also determined that part of the connectivity issues were directly related to the amount of bandwidth. As a result of my troubleshooting exercises with Trillion, the NETRETN board and I decided that we needed to add another POP. When the network began we had 45MB of internet and added 50 MB during the second year (2005). The cost of these repairs were paid by Trillion because they were necessary to achieve the services contemplated under the original contract

17. Because NETRETN signed a multi-year contract with Trillion it was not necessary to file another form 470, rather NETRETN along with Jill Duncan simply completed a form 471 for subsequent E-Rate funding years.
18. As I mentioned before, during 2004 and 2005, I spent a considerable amount of time with representatives from Trillion working out issues with the network. During this time I shared several working lunches with the Trillion folks; however, none of the meals were social outings and I don't remember who paid for the meals each time.
19. In 2006, the Board determined that the network needed to be upgraded so that the network could be expanded because additional connections needed to be made and more bandwidth was necessary. The board also decided to add voice telephone services to the network. The initial contract was still in effect and, as a result, I continued to have contact with Trillion related to maintenance and improvement of the network. Because NETRETN was seeking additional bandwidth and expanded services that were not a part of the original contract with Trillion, it was necessary to seek E-Rate funding, and file new Forms 470, for the additional services sought.
20. In 2006, NETRETN, with the assistance of Jill Duncan, prepared two Form 470s for the upgrade and expansion of the network. The 470 was filed with USAC and was posted according to the rules. NETRETN did not prepare a

separate RFP for the expansion. While I don't remember the name of the company, one vendor other than Trillion called me to inquire about the posting. I explained the structure of the network and what NETRETN needed. The vendor I spoke with indicated that because Trillion owned the existing network and the related equipment, the vendor would have had to purchase space on Trillion's poles or construct their own poles in order to offer the services NETRETN sought. Because of this, the vendor indicated to me they would not submit a competitive bid. Trillion was the only potential vendor to submit proposals. However, I never signaled to Trillion (or anyone else) that Trillion's bid would be accepted. My only contact with Trillion during this time was to review current service issues unrelated to the expansion.

21. After the 2006 bidding window closed, the Board considered Trillion's proposal, with price being the primary factor and decided to accept its proposal. The Board negotiated a new six year contract in accordance with the specifications on the form 470 to provide the expanded network services.
22. No one from Trillion was involved in developing the technical specifications for the Forms 470 posted in 2006. I continued to have contact with Trillion during the competitive bidding window; however, that contact

was only for the purposes of maintaining and servicing the existing network. I did not have any meals or play golf with anyone from Trillion during the bidding window. In fact, it would have been impossible for NETRETN's network to remain functional if I was prohibited from having constant contact with the service personnel at Trillion to resolve technical issues with the network.

23. While I don't specifically remember nor do I have any records I may have had working lunches during 2006 with representatives from Trillion; however, I do not remember who paid. I also may have played golf with a representative from Trillion in 2006; however I don't remember where the game took place. Between 2006 and 2009, I established friendly relationships with employees at Trillion because we have had to work so closely together in improving and maintaining the network. When I traveled to Austin, Texas, whether on NETRETN business or on other business, I have occasionally played golf with Ken Proud, who at the time was working for Trillion. On several other occasions, when Trillion folks have traveled to Mt. Pleasant, I have hosted them at my golf club, where I am a member. On those occasions, my golf fees were not paid by anyone from Trillion. In fact, my golf was at my expense, as a member of the club where we played.

24. I understand that USAC may believe Trillion purchased golf equipment for me as a gift. Specifically, I understand that USAC is investigating whether Trillion ever purchased a golf club – a new driver – for me. This contention is not true. During one of my visits to Austin, I had recently purchased, at my expense, a new driver. I played with Ken Proud that day and I recall playing very well. In fact, I beat Ken that particular round, much to my enjoyment. After I returned to work, I recall Ken sending me an email to the effect that I should “take good care of [my] new driver.” This was a reference to how well I played with my new equipment that round, but it in no way indicates that Trillion purchased a golf club for me. To the contrary, as stated above, I purchased the new driver myself, at my own expense. Trillion never purchased golf equipment for me.

25. Under no circumstances did my encounters with Trillion employees create a conflict of interest in the E-Rate bidding situations. Also, I have never been on the NETRETN board, so I have never voted to accept or reject any Trillion contract.

26. From 2006-2009, I continued to work closely with Trillion to improve the functionality of the network and to ensure that the members of NETRETN received reliable internet service. Again, all of my contact with Trillion was absolutely necessary to maintain the integrity of the existing network.

27. For funding year 2007, NETRETN submitted Forms 471 for funding under the previous contracts and prior Forms 470. NETRETN also needed to add services to the network to continue expansion to new locations within the network. Therefore, it was necessary to file a new Form 470 for funding year 2007. NETRETN filed the form 470 with USAC and kept the bidding window open for the requisite 28 days. I did not receive any inquiries from any other vendor other than Trillion. I did not ever signal to Trillion that its bid would be accepted. After the bidding window closed Trillion was the only vendor to submit a proposal. The Board reviewed the proposal, with price being the primary factor, and accepted Trillion's proposal. NETRETN entered into a contract for the expanded services to be offered by Trillion.

28. In 2007, I had one or two working lunches throughout the course of working with Trillion on the technical aspects of maintaining the network. Also in 2007, Trillion invited me and a member of the NETRETN board to attend its customer summit in Austin. Trillion provided airline transportation to attend the one day meeting in Austin where Trillion customers from around the country gathered to give feedback regarding customer service and reliability issues to Trillion. I participated in the meeting to the same extent as other Trillion customers from around the country. Trillion provided a box lunch during the meeting and I believe we

returned the same day. If we did not, Trillion provided lodging and we returned the next day. None of these encounters took place during the competitive bidding window during 2007 and my encounters with Trillion representatives did not influence the Board's decision to accept Trillion's proposal.

29. For funding year 2008, the NETRETN board determined that another major expansion was necessary. New districts desired to receive service and the network again needed more bandwidth. Accordingly, Jill Duncan, the Board and I developed new Forms 470 for the new services. No other persons or entities participated in preparing the forms. The Forms 470 were filed with USAC and bidding remained open for the requisite 28 days. I did not receive any inquires during this time from other vendors. I did not signal to Trillion that it would receive the contract. The only vendor to submit a proposal was Trillion. The Board reviewed the proposal, with price being the primary factor, and decided to accept Trillion's proposal. NETRETN entered into a contract for the services with Trillion as a result.

30. While I do not remember specific encounters, I shared one or two working lunches with Trillion employees while working on network related issues in 2008 as well. None of these lunches took place during the competitive bidding window. Also I am aware that USAC has information that I

attended a dinner event at the Moonshine Bar and Grill in Austin on February 5, 2008, the day before the NETRETN board signed its contract extension with Trillion. I was not at that dinner event. I was at a conference in Oklahoma City and I have attached to this Declaration a true and accurate copy of my travel voucher for that time period outlining my expenses associated with that trip. As I recall, there were not any representatives of NETRETN at the event in Austin that coincided with the alleged Moonshine dinner.

Ms. Portanova's letter alleges that NETRETN shared a copy of the Form 470 for this portion of the project with Trillion prior to filing it with USAC. As I recall, the Form 470 was developed solely by NETRETN and Jill Duncan's Origin Group. On the afternoon the Form 470 was filed, we did share a copy of the final Form 470 with Jennifer Carter. However, the Form 470 was complete at that time, and Ms. Duncan was in the process of filing it with USAC. Moreover, Ms. Carter did not make any changes to the Form, nor did she influence the drafting of the Form in any way. In particular, Trillion in no way "influenced" the Form 470 "to ensure that Trillion would be awarded the contract," as asserted in Ms. Portanova's letter. My purpose in sharing the final Form 470 with Ms. Carter was to ensure that the technical specifications that we required were compatible with Trillion's

current system. Because NETRETN was bidding an upgrade to its existing capabilities, whatever service provider provided the new service would have to offer a service that was compatible with the existing network services that NETRETN members received. I sent the final Form 470 to Ms. Carter as NETRETN was filing it, only as a final assurance of this compatibility. Again, it is important to emphasize that the Form 470 was not changed by Trillion, and the same Form was filed with USAC that afternoon.

32. As for specific dollar amounts contained in Ms. Portanova's June 4, 2010 letter and the 2006-2007 and 2008-2009 tax returns, I recall only working lunches and we may have played golf either at my club, where I did not pay or I played with someone from Trillion in Austin.

- 2007 \$747.83 – I assume that a majority of this expense was NETRETN's attendance at the customer council. This was the trip that I described in paragraph 28 above. This was not a social event, rather a working event and I certainly would not characterize it as a gift. The remainder of the expenses I believe were working lunches.
- 2008: \$44.04, I assume this is associated with the Moonshine dinner that I did not attend. Therefore, there were no alleged gifts that I am

aware of. I am very concerned that these dollar amounts do not accurately reflect encounters I had with Trillion. Specifically, it seems that USAC is relying on Trillion's expense report for all of these numbers and I am sure that at least one alleged encounter, the Moonshine dinner, was inaccurately reflected. All of the alleged dollar amounts seem too high for the amount of in-person contact I had with Trillion.

33. As part of my responsibilities at the Region VIII ESC I was also the director of the ESC's TIPS/TAPS program which is an interlocal purchasing cooperative for local governments across Texas and the United States. Separate and apart from NETRETN and the E-Rate program, Trillion is a contracted vendor through the TIPS program. I have had a long term relationship with Trillion through the TIPS program. Many of my encounters with Trillion during 2006, 2007, and 2008 were also to work on issues with the TIPS program, unrelated to these E-Rate issues.

34. I have never accepted a gift of any kind from Trillion. The only money that was ever expended by Trillion on my behalf was for working lunches or for golf games that I reciprocated at my golf club.

35. As I have said previously, I did not have any working lunches or play golf socially with anyone from Trillion during the E-Rate bidding windows for

any funding years. Also, any meals that I shared with Trillion were part of working lunches. Ultimately, it was the Board's decision whether to engage the services of Trillion. While the Board considered the information I shared with them, on each occasion, the Board only had one vendor to choose from. On several occasions, I discussed with the Board ways we could continue to provide excellent broadband service to our members while at the same time encouraging competitive bids from other providers.

Our ultimate goal was to provide the lowest cost to the members of NETRETN. Ultimately we were unsuccessful in attracting other competitive bids. Although I am not sure of the reason that other providers did not bid, it is important to understand that few telecommunications facilities exist in the geographic region served by NETRETN's member school districts. Because Trillion owned the existing network infrastructure being used to serve NETRETN, other vendors would have been required to make a substantial capital investment in order to offer a competing service. I suspect that these providers were unwilling to make that investment at the time.

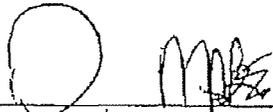
36. Outside of the initial interest in the project from SBC, NETRETN did not receive any bids from any other service providers for any of the Form 470s in question. I can recall maybe 2 or 3 phone calls between 2004 and 2009

from other potential bidders to inquire about bidding on the services. Those companies that I did talk with indicated that because Trillion owned the infrastructure, their company could not offer a competitively priced bid.

37. Today, the NETRETN network is among the gold standards of networks of its kind. NETRETN has 3 POPs, 150 and 200 MB radios close to every POP and 335 MB of total bandwidth. The NETRETN board is very proud of its network and it has worked tirelessly to expand and improve the network to provide the best value and service to the school children of Northeast Texas.

38. To my knowledge Trillion was not involved in any way with the development of any Form 470s for FY2010. NETRETN has conducted a fair and open bidding process free from conflicts of interest for each applicable funding year and 2010 is no different. I retired from Region VIII on October of 2009.

Signed under the penalty of perjury.



David Mabe

7-30-10
Date

EXHIBIT D

470

Schools and Libraries Universal Service Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

Form 470 Application Number: 829880000573553
Applicant's Form Identifier: NTRETN-2006-Addis
Application Status: CERTIFIED
Posting Date: 01/11/2006
Allowable Contract Date: 02/08/2006
Certification Received Date: 01/12/2006

1. Name of Applicant: Northeast Texas Regional Education Telecommunications Network (NTxRETN)		
2. Funding Year: 07/01/2006 - 06/30/2007		3. Your Entity Number 150217
4a. Applicant's Street Address, P.O. Box, or Route Number 2230 N. Edwards		
City Mt. Pleasant	State TX	Zip Code 75456
D. Telephone number (903) 572-8551	ext. 2606	C. Fax number ()
5. Type Of Applicant		
<input type="radio"/> Individual School (individual public or non-public school) <input type="radio"/> School District (LEA; public or non-public; e.g., diocesan) local district representing multiple schools <input type="radio"/> Library (including library system, library outlet/branch or library consortium as defined under LSTA) <input checked="" type="radio"/> Consortium (intermediate service agencies, states, state networks, special consortia of schools and/or libraries)		
6a. Contact Person's Name: David Mabe		
First, if the Contact Person's Street Address is the same as in Item 4 above, check this box. If not, please complete the entries for the Street Address below.		
6b. Street Address, P.O. Box, or Route Number		
<input checked="" type="radio"/> 2230 N. Edwards		
City Mt. Pleasant	State TX	Zip Code 75456
Check the box next to your preferred mode of contact and provide your contact information. One box MUST be checked and an entry provided.		
<input checked="" type="radio"/> 6c. Telephone Number (903) 572-8551 ext. 2606		

6d. Fax Number () -
6e. E-mail Address DMabe@reg8.net

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):

a. Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted tariffed or month-to-month services for each funding year.

b. Services for which a new written contract is sought for the funding year in Item 2.
 Check if you are seeking a multi-year contract and/or a contract featuring voluntary extensions.

c. A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous funding year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous funding year OR a contract signed on/before 7/10/97 and previously reported on a Form 470 as an existing contract do NOT require filing of a new Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, 10 and/or 11 below), and answer the questions in each category you select.

8 Telecommunications Services
 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.

a. **YES**. I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 12.

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

Whether you check YES or NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

<input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.	<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.
--	---	--

Service or Function:	Quantity and/or Capacity:
Additional Internet Bandwidth	45 MB or greater
Wide Area Network Upgrades	15 MB or greater to multiple locations
Wide Area Network Voice Services	Multiple schools/districts

9 Internet Access
 Do you have a Request for Proposal (RFP) that specifies the services you are seeking? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to

have and RFP, you risk denial of your funding requests.

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

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

Whether you check YES or NO, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c <input checked="" type="radio"/> Check this box if you prefer discounts on your bill.	<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.
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Service or Function:	Quantity and/or Capacity:
Additional Internet Bandwidth	45 MB or greater
Wide Area Network Upgrades	15 MB or greater - multiple locations

10 Internal Connections Other than Basic Maintenance
Do you have a Request for Proposal (RFP) that specifies the services you are seeking? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

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

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

Whether you check YES or NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., a router, hub and cabling) and quantity and/or capacity (e.g., connecting 1 classroom of 30 students). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c <input checked="" type="radio"/> Check this box if you prefer discounts on your bill.	<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.
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11 Basic Maintenance of Internal Connections
Do you have a Request for Proposal (RFP) that specifies the services you are seeking? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

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

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

Whether you check YES or NO, you must list below the Basic Maintenance Services you seek. Specify each **service or function** (e.g., basic maintenance of routers) and quantity and/or capacity (e.g., for 10 routers). See the Eligible Services List at www.sl.universalservice.org for examples of eligible

Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

<input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.	<input checked="" 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.
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12. (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the Authorized Person who signs this form.

Name David Mabe	Title Deputy Executive Director
Telephone number (903) 575 - 2602	
Fax number (903) 575 - 2618	
E-mail Address DMabe@reg8.net	

13a. Check this box if there are any restrictions imposed by state or local laws or regulations on how or when service providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or a Web address where they are posted and provide a contact name and telephone number.
NTxRETN is currently under contract through year 2008 for WAN services. We are requesting bandwidth upgrades as an ammendment to the existing contract and/or proposals for new service. Additionally, we are requesting proposals from qualified providers to offer voice service over the WAN.

Check this box if no state and local procurement/competitive bidding requirements apply to the procurement of services sought on this Form 470.

13b. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, you may summarize below (including the likely timeframes). If you are requesting services for a funding year for which a Form 470 cannot yet be filed online, include that information here.

Block 3: Technology Resources

14. **Basic telephone service only:** If your application is for basic telephone service and voice mail only, check this box and skip to Item **16**. Basic telephone service is defined as wireline or wireless single line voice service (local, cellular/PCS, and/or long distance) and mandatory fees associated with such service (e.g., federal and state taxes and universal service fees).

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

- a.** Desktop software: Software required has been purchased; and/or is being sought.
- b.** Electrical systems: adequate electrical capacity is in place or has already been arranged; and/or upgrading for additional electrical capacity is being sought.
- c.** Computers: a sufficient quantity of computers has been purchased; and/or is being sought.
- d.** Computer hardware maintenance: adequate arrangements have been made; and/or are being

sought.

e. Staff development: all staff have had an appropriate level of training /additional training has already been scheduled; and/or training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

Check the ONE choice (Item 16a, 16b or 16c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

a. Individual school or single-site library.

b. Statewide application for (enter 2-letter state code) representing (check all that apply):

- All public schools/districts in the state;
- All non-public schools in the state;
- All libraries in the state;

If your statewide application includes INELIGIBLE entities, check here: If checked, complete Item 18

c. School district, library system, or consortium application to serve multiple eligible entities:

Number of eligible sites	46
<i>For these eligible sites, please provide the following</i>	
Area Codes (list each unique area code)	Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces
903	346,359,367,379,395,427,438,439,459,488,537,547,575,645,667,674,684,796

17. Billed Entities

17. Billed Entities: List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. If a Billed Entity cited on your Form 471 is not listed below, funding may be denied for the funding requests associated with this Form 470.

Entity	Entity Number
Northeast Texas Regional Education Telecommunications Network (NTxRETN)	150217

18. Ineligible Participating Entities

List the names of any entity/entities here for whom services are requested that are not eligible for the Universal Service Program.

Ineligible Participating Entity	Area Code	Prefix
---------------------------------	-----------	--------

Block 5: Certification and Signature

19. I certify that the applicant includes: (Check one or both.)

a. schools under the statutory definitions of elementary and secondary schools found in the **No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7081(18) and (38)**, that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or

b. libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

20. I certify that all of the individual schools, libraries, and library consortia receiving services under this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, an SLD-certified technology plan approver, prior to the commencement of service. The plans were written at the following level(s):

a. individual technology plans for using the services requested in the application; and/or

b. higher-level technology plans for using the services requested in the application; or

c. no technology plan needed; application requests basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only

21. I certify that I will post my Form 470 and (if applicable) make my RFP available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals. I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the status and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

22. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the entity or entities listed on this application have not received anything of value or a promise of anything of value, other than the services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.

23. I acknowledge that support under this support mechanism is conditional upon the school(s) and/or library(ies) I represent securing access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support.

24. I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies). I certify that I am authorized to submit this request on behalf of the eligible entity(ies) listed on this application, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. I certify that I have reviewed all applicable state and local procurement/competitive bidding requirements and that I have complied with them. I acknowledge that persons willfully making false statements on this form can be punished by fine or forfeiture, under the Commissions Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

26. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program.

27. Signature of authorized person:

28. Date (mm/dd/yyyy): **01/12/2006**

29. Printed name of authorized person: **David Mabe**

30. Title or position of authorized person: **Deputy Executive Director**

31a. Address of authorized person: **PO Box 1894**

City: **Mt. Pleasant** State: **TX** Zip: **75456-1894**

31b. Telephone number of authorized person: **(903) 575 - 2602**

31c. Fax number of authorized person: **(903) 5752618**

31d. E-mail address number of authorized person: **DMabe@reg8.net**

31e. Name of authorized person's employer: **Region VIII Education Service Center**

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the SLD web site at www.sl.universalservice.org or call the Client Service Bureau at 1-888-203-8100.

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator, 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of any applicable statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or a adjudicative body when (a) the FCC, or (b) any employee of the FCC, or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, information provided in or submitted with this form or in response to subsequent inquiries may also be subject to disclosure consistent with the Communications Act of 1934, FCC regulations, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

SLD Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100

For express delivery services of U.S. Postal Service, Return Receipt Requested, mail this form to:

SLD Forms
ATTN: SLD Form 470
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100

FCC Form 470
November 2004

NEW SEARCH

Return Search Results

EXHIBIT E

Travel Voucher Region VIII Education Service Center

rpTravVouch2

Pay To: David Mabe

Dates Covered: 02/01/2008 to 02/28/2008

Consultant# 09

Payment Authorization#:

Check # : _____

3130
Vendor #

Signature of Claimant

Department Director

Date

Chief Financial Officer	Date	Executive Director	Date
DISTRIBUTION			AMOUNTS CLAIMED
Fares, Public Transportation (attach receipts)			\$6.00
Personal Car Mileage	1,575	Miles @ 0.500	\$795.40
Lodging Expense (attach receipts)			\$59.42
Local/State Tax			\$0.00
Meal Expense: Taxable		Nontaxable \$108.00	\$108.00
Car Rental			
Other Expense			\$507.58
Honorarium			
Airline			
SUBTOTAL			\$1,476.40
Less Direct Bill →			\$0.00
Budget Account #	Amount	Total Reimbursement →	\$1,476.40
168 62 6411 00 212 899 207	\$1,476.40		

RECORD OF TRANSPORTATION AND DUTIES PERFORMED						
Departure Date/Time	Origin	Person Contacted	RT	Car Rent PO	Mileage	Meals
Arrival Date/Time	Destination	Purpose of Trip	OW	Lodging PO	Courtesy	Lodging
02/01/2008 10:00 am	8	Bill Smith	RT		210	\$0.00
02/01/2008 04:00 pm	McKinney, TX	Chapter 41 meeting				\$0.00
02/04/2008 08:00 am	8	OTA	OW		275	\$28.00
02/04/2008 02:00 pm	Oklahoma City, OK	OTA meeting (TIPS)				\$0.00
02/05/2008 08:00 am	Oklahoma City, OK	OTA	OW		15	\$18.00

RECORD OF TRANSPORTATION AND DUTIES PERFORMED						
Departure Date/Time	Origin	Person Contacted	RT	Car Rent PO	Mileage	Meals
Arrival Date/Time	Destination	Purpose of Trip	OW	Lodging PO	Courtesy	Lodging
02/05/2008 04:00 pm	Oklahoma City, OK	OTA meeting (TIPS)				\$0.00
02/06/2008 03:00 pm	Oklahoma City, OK	OTA	OW		275	\$26.00
02/06/2008 09:00 pm	8	Return				\$0.00
02/08/2008 02:00 pm	8	Bill King	RT		126	\$0.00
02/08/2008 05:00 pm	Arkadelphia	Meeting with KLC				\$0.00
02/19/2008 02:00 pm	8	TISD	RT		126	\$0.00
02/19/2008 03:00 pm	Arkadelphia	Meeting with TISD				\$0.00
02/23/2008 08:00 am	8	Randy Wallis	RT		74	\$0.00
02/23/2008 10:30 am	Sulphur Springs	TIPS meeting				\$0.00
02/25/2008 08:00 am	8	TIPS	OW		237	\$18.00
02/25/2008 02:00 pm	Pryor, OK	TIPS meeting				\$59.42
02/26/2008 02:00 pm	Pryor, OK	TIPS	OW		237	\$18.00
02/26/2008 07:00 pm	8	return				\$0.00

EXHIBIT F

hold

From: David Mabe [DMabe@reg8.net]
Sent: Tuesday, January 08, 2008 4:24 PM
To: Jennifer Carter
Subject: FW: RE: NTRETN 470 Ready to submit

Attachments: NTRETN470DraftRev.pdf



NTRETN470DraftRe
v.pdf (233 KB)...

Looks good to me. Your thoughts?

From: Jill Duncan [jduncan@theorigingroup.net]
Sent: Tuesday, January 08, 2008 4:13 PM
To: David Mabe
Subject: RE: RE: NTRETN 470 Ready to submit

No big rush to sign the Interlocal agreements, since they can be contract-specific, For WAN, you could have the new districts sign off AFTER you award the WAN services contract to _____, but before filing the 471 on Feb 7th. The Interlocal is supposed to cover the funding year in question (08-09), so when would a school normally sign their contract? It is their "contract" for service.

Attached is a pdf of your Form 470 so you don't have to get it on the website.

----- Original Message ----- On 1/8/2008 3:49 PM David Mabe wrote:
Form 470 # 75627000637608 DRAFT - has not yet been submitted.

Two Questions:

1. Currently I have both boxes checked:
Schools covered by individual technology plans Schools covered by higher-level technology plan (I do not know what this is or if it is necessary??)

Do you want me to remove one o f these checks?

2. Verify if each of the 6 new districts has signed and dated their NTRETN Consortium LOA prior to you hitting "submit" on this Form 470?

The school district-Region 8 Interlocal Agreements will need to be signed also - do they also specify NTRETN membership? Last time we only had the NTRETN LOA signed by the new members. I may have to get one of them (Wolfe City) to back date their LOA.

Jill Duncan The Origin Group P: 713-416-3352 F: 281-554-3186

470

Schools and Libraries Universal Service
Description of Services Requested
and Certification Form

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

Form 470 Application Number: 756270000637608

Applicant's Form Identifier: 2008-470-1

Application Status: CERTIFIED

Posting Date: 01/08/2008

Allowable Contract Date: 02/05/2008

Certification Received Date: 01/09/2008

1. Name of Applicant: Northeast Texas Regional Education Telecommunications Network (NTxRETN)		
2. Funding Year: 07/01/2008 - 06/30/2009		3. Your Entity Number 150217
4a. Applicant's Street Address, P.O. Box, or Route Number 2230 N. Edwards		
City Mt. Pleasant	State TX	Zip Code 75456
b. Telephone number (903) 572-8551	ext. 2606	c. Fax number () -
5. Type Of Applicant		
<input type="radio"/> Individual School - (individual public or non-public school)		
<input type="radio"/> School District - (LEA public or non-public [e.g., diocesan] local district representing multiple schools)		
<input type="radio"/> Library - (including library system, library outlet/branch or library consortium as defined under (LSTA))		
<input checked="" type="radio"/> Consortium - (intermediate service agencies, states, state networks, special consortia of schools and/or libraries)		
6a. Contact Person's Name: David Mabe		
<i>Check this box if the Contact Person's Street Address is the same as in Item 4 above; check this box. If not, please complete the entries for the Street Address below.</i>		
6b. Street Address, P.O. Box, or Route Number		
<input checked="" type="radio"/> 2230 N. Edwards		
City Mt. Pleasant	State TX	Zip Code 75456
<i>Check the box next to your preferred mode of contact and provide your contact information. One box MUST be checked and an entry provided.</i>		
<input checked="" type="radio"/> 6c. Telephone Number (903) 572- 8551 ext. 2606		

6d. Fax Number	(903) 575- 2618
6e. E-mail Address	dmabe@reg8.net

Block 2: Summary Description of Needs or Services Requested

7. This Form 470 describes (check all that apply):

a. Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted, tariffed or month-to-month services for each funding year.

b. Services for which a new written contract is sought for the funding year in Item 2.
 Check if you are seeking: a multi-year contract and/or a contract featuring voluntary extensions.

c. A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous funding year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous funding year OR a contract signed on/before 7/10/97 and previously reported on a Form 470 as an existing contract do NOT require filing of a new Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, 10 and/or 11 below), and answer the questions in each category you select.

8. Telecommunications Services
 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.

a. YES. I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one).
 the Contact Person in Item 6 or the contact listed in Item 12.

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

Whether you check YES or NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines, plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c. <input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.	<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.
---	---	--

Service or Function:	Quantity and/or Capacity:
licensed wireless WAN	for multiple school districts in Northeast Texas
WAN and Internet services	to 6 school district sites
50 Mb POP Internet with basic firewall services	1 location

9. Internet Access
 Do you have a Request for Proposal (RFP) that specifies the services you are seeking? If you check

YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have an RFP, you risk denial of your funding requests.

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

b **NO**, I have not released and do not intend to release an RFP for these services.
Whether you check YES or NO, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c <input checked="" type="radio"/> Check this box if you prefer discounts on your bill.	<input type="radio"/> Check this box if you prefer reimbursement after paying your bill in full.	<input type="radio"/> Check this box if you do not have a preference.
--	---	--

Service or Function:	Quantity and/or Capacity:
licensed wireless WAN	multiple schools in Northeast Texas
WAN and Internet service	to 6 school district locations
50 Mb POP Internet with basic firewall services	to 1 location

10 Internal Connections Other than Basic Maintenance
 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.

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

b **NO**, I have not released and do not intend to release an RFP for these services.
Whether you check YES or NO, you must list below the Internal Connections Services you seek. Specify each **service or function** (e.g., a router, hub and cabling) and quantity and/or capacity (e.g., connecting 1 classroom of 30 students). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c <input checked="" type="radio"/> Check this box if you prefer discounts on your bill.	<input type="radio"/> Check this box if you prefer reimbursement after paying your bill in full.	<input type="radio"/> Check this box if you do not have a preference.
--	---	--

11 Basic Maintenance of Internal Connections
 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.

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

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

Whether you check YES or NO, you must list below the Basic Maintenance Services you seek. Specify each **service or function** (e.g., basic maintenance of routers) and quantity and/or capacity (e.g., for 10 routers). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

<input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.	<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.
---	--	---

12 (Optional). Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the Authorized Person who signs this form.

Name David Mabe	Title Deputy Executive Director
Telephone number (903) 575 - 2602	
Fax number (903) 575 - 2618	
E-mail Address dmabe@reg8.net	

13a Check this box if there are any restrictions imposed by state or local laws or regulations on how or when service providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or a Web address where they are posted and provide a contact name and telephone number.
NTxRETN is currently under contract with a provider through year 2008 for WAN services.

Check this box if no state and local procurement/competitive bidding requirements apply to the procurement of services sought on this Form 470.

13b. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, you may summarize below (including the likely timeframes). If you are requesting services for a funding year for which a Form 470 cannot yet be filed online, include that information here.

Block 3: Technology Resources

14 **Basic telephone service only:** If your application is for basic telephone service and voice mail only, check this box and skip to Item 16. Basic telephone service is defined as wireline or wireless single line voice service (local, cellular/PCS, and/or long distance) and mandatory fees associated with such service (e.g., federal and state taxes and universal service fees).

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop software: Software required has been purchased; and/or is being sought.

b. Electrical systems: adequate electrical capacity is in place or has already been arranged; and/or upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers has been purchased; and/or is being sought.

d. Computer hardware maintenance: adequate arrangements have been made; and/or are being sought.

e. Staff development: all staff have had an appropriate level of training /additional training has already been scheduled; and/or training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire:

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

Check the ONE choice (Item 16a, 16b or 16c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

a. Individual school or single-site library.

b. Statewide application for (enter 2-letter state code) representing (check all that apply):

- All public schools/districts in the state.
- All non-public schools in the state.
- All libraries in the state.

If your statewide application includes INELIGIBLE entities, check here. If checked, complete Item 18.

c. School district, library system, or consortium application to serve multiple eligible entities:

Number of eligible sites	195
<i>For these eligible sites, please provide the following</i>	
Area Codes (list each unique area code)	Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces
903	346,388,367,316,379,195,427,438,439,459,485,496,521,527,537,543,562,568,572,577,582,585,626,639,652,676,692,664,695,671,726,729,732,733 <small>748,724,704,706,631,633,634,635,636,637,638,639,640,641,642,643,644,645,646,647,648,649,650,651,652,653,654,655,656,657,658,659,660,661,662,663,664,665,666,667,668,669,670,671,672,673,674,675,676,677,678,679,680,681,682,683,684,685,686,687,688,689,690,691,692,693,694,695,696,697,698,699,700</small>

17. Billed Entities

17. Billed Entities: List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. If a Billed Entity cited on your Form 471 is not listed below, funding may be denied for the funding requests associated with this Form 470.

Entity	Entity Number
Northeast Texas Regional Education Telecommunications Network (NTxRETN)	150217

18. Ineligible Participating Entities		
List the names of any entity/entities here for whom services are requested that are not eligible for the Universal Service Program.		
Ineligible Participating Entity	Area Code	Prefix

Block 5: Certification and Signature

19. I certify that the applicant includes: (Check one or both.)

a. schools under the statutory definitions of elementary and secondary schools found in the **No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7081(18) and (38)**, that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or

b. libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).

20. I certify that all of the individual schools, libraries, and library consortia receiving services under this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, an SLD-certified technology plan approver, prior to the commencement of service. The plans were written at the following level(s):

a. individual technology plans for using the services requested in the application, and/or

b. higher-level technology plans for using the services requested in the application, or

c. no technology plan needed; application requests basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only

21. I certify that I will post my Form 470 and (if applicable) make my RFP available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals. I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the status and Commission rules regarding the application for receipt of, and delivery of services receiving schools and libraries discounts. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.

22. I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the Commission's rules at 47 C.F.R. Sec. 54.500(k). Additionally, I certify that the entity or entities listed on this application have not received anything of value or a promise of anything of value, other than the services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant in connection with this request for services.

23. I acknowledge that support under this support mechanism is conditional upon the school(s) and/or library(ies) I represent securing access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support.

24. I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies). I certify that I am authorized to submit this request on behalf of the eligible entity(ies) listed on this

application, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25. I certify that I have reviewed all applicable state and local procurement/competitive bidding requirements and that I have complied with them. I acknowledge that persons willfully making false statements on this form can be punished by fine or forfeiture, under the Commissions Act, 47 U.S.C. Secs. 502-503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

26. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program.

27. Signature of authorized person:

28. Date (mm/dd/yyyy): **01/09/2008**

29. Printed name of authorized person: **David Mabe**

30. Title or position of authorized person: **Deputy Executive Director**

31a. Address of authorized person: **P.O. Box 1894**
City: **Mt. Pleasant** State: **TX** Zip: **75456-2602**

31b. Telephone number of authorized person: **(903) 575 - 2602**

31c. Fax number of authorized person: **(903) 5752618**

31d. E-mail address number of authorized person: **dmabe@reg8.net**

31e. Name of authorized person's employer: **Region VIII Education Service Center**

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the SLD web site at www.sl.universalservice.org or call the Client Service Bureau at 1-888-203-8100.

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If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your

application without action.

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Please submit this form to:

SLD Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100

For express delivery services or U.S. Postal Service Return Receipt Requested, mail this form to:

SLD Forms
ATTN: SLD Form 470
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100

FCC Form 470
November 2004

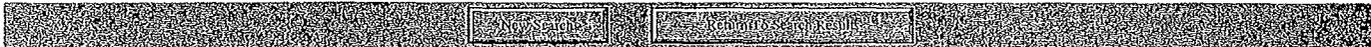


EXHIBIT H

hold

From: David Mabe [DMabe@reg8.net]
Sent: Tuesday, January 08, 2008 4:31 PM
To: Jennifer Carter
Subject: RE: RE: NTRETN 470 Ready to submit

Thanks!!

From: Jennifer Carter [jennifer.carter@trillion.net]
Sent: Tuesday, January 08, 2008 4:28 PM
To: David Mabe
Subject: RE: RE: NTRETN 470 Ready to submit

David,

I think it looks fine.

Jennifer

-----Original Message-----

From: David Mabe [mailto:DMabe@reg8.net]
Sent: Tuesday, January 08, 2008 4:24 PM
To: Jennifer Carter
Subject: FW: RE: NTRETN 470 Ready to submit

Looks good to me. Your thoughts?

From: Jill Duncan [jduncan@theorigingroup.net]
Sent: Tuesday, January 08, 2008 4:13 PM
To: David Mabe
Subject: RE: RE: NTRETN 470 Ready to submit

No big rush to sign the Interlocal agreements, since they can be contract-specific, For WAN, you could have the new districts sign off AFTER you award the WAN services contract to _____, but before filing the 471 on Feb 7th. The Interlocal is supposed to cover the funding year in question (08-09), so when would a school normally sign their contract? It is their "contract" for service.

Attached is a pdf of your Form 470 so you don't have to get it on the website.

----- Original Message ----- On 1/8/2008 3:49 PM David Mabe wrote:
Form 470 # 756270000637608 DRAFT - has not yet been submitted.

Two Questions:

1. Currently I have both boxes checked:
Schools covered by individual technology plans Schools covered by higher-level technology plan (I do not know what this is or if it is necessary??)

Do you want me to remove one o f these checks?

2. Verify if each of the 6 new districts has signed and dated their NTRETN Consortium LOA prior to you hitting "submit" on this Form 470?

The school district-Region 8 Interlocal Agreements will need to be signed also - do they also specify NTRETN membership? Last time we only had the NTRETN LOA signed by the new members. I may have to

get one of them (Wolfe City) to back date their LOA.

Jill Duncan The Origin Group P: 713-416-3352 F: 281-554-3186

EXHIBIT I

FCC Form

Approval by OMB
3060-0806

470

**Schools and Libraries Universal Service
Description of Services Requested
and Certification Form**

Estimated Average Burden Hours Per Response: 4.0 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator website and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application.

(To be completed by entity that will negotiate with providers.)

Block 1: Applicant Address and Identifications

Form 470 Application Number: 950030000800033
Applicant's Form Identifier: 2010NTRETN
Application Status: CERTIFIED
Posting Date: 12/18/2009
Allowable Contract Date: 01/15/2010
Certification Received Date: 12/18/2009

1. Name of Applicant: Northeast Texas Regional Education Telecommunications Network (NTxRETN)		
2. Funding Year: 07/01/2010 - 06/30/2011		3. Your Entity Number 150217
4a. Applicant's Street Address, P.O.Box, or Route Number 2230 N. Edwards		
City Mt. Pleasant	State TX	Zip Code 75456
b. Telephone number (903) 572- 8551	ext. 2606	c. Fax number () -
5. Type Of Applicant		
<input checked="" type="checkbox"/> Individual School (individual public or non-public school)		
<input checked="" type="checkbox"/> School District (LEA;public or non-public[e.g., diocesan] local district representing multiple schools)		
<input checked="" type="checkbox"/> Library (including library system, library outlet/branch or library consortium as defined under LSTA)		
<input checked="" type="checkbox"/> Consortium (intermediate service agencies, states, state networks, special consortia of schools and/or libraries)		
6a. Contact Person's Name: Karen Whitaker		
<i>First, if the Contact Person's Street Address is the same as in Item 4 above, check this box. If not, please complete the entries for the Street Address below.</i>		
6b. Street Address, P.O.Box, or Route Number		
<input checked="" type="checkbox"/> Region VIII Education Service Center 2230 N. Edwards		

City Mt. Pleasant	State TX	Zip Code 75456
<p>Check the box next to your preferred mode of contact and provide your contact information. One box MUST be checked and an entry provided.</p>		
<input checked="" type="checkbox"/> 6c. Telephone Number	(903) 575- 2715	
<input checked="" type="checkbox"/> 6d. Fax Number	(903) 575- 2618	
<input checked="" type="checkbox"/> 6e. E-mail Address	kwhitaker@reg8.net	

Block 2: Summary Description of Needs or Services Requested

7 This Form 470 describes (check all that apply):

a. Tariffed or month-to-month services to be provided without a written contract. A new Form 470 must be filed for non-contracted tariffed or month-to-month services for each funding year.

b. Services for which a new written contract is sought for the funding year in Item 2.
 Check if you are seeking a multi-year contract and/or a contract featuring voluntary extensions

c. A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous funding year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous funding year OR a contract signed on/before 7/10/97 and previously reported on a Form 470 as an existing contract do NOT require filing of a new Form 470.

What kinds of service are you seeking: Telecommunications Services, Internet Access, Internal Connections Other than Basic Maintenance, or Basic Maintenance of Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, 10 and/or 11 below), and answer the questions in each category you select.

8 Telecommunications Services
 Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a YES, I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 12.

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

Whether you check YES or NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

<input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.	<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.
--	---	--

Service or Function:	Quantity and/or Capacity:
Digital Transmission, Data Transport	Incremental pricing: 100MB, 250MB, 500MB, & 1GB call contact in (#12) for details

9 Internet Access
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a YES, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 12.

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

Whether you check YES or NO, you must list below the Internet Access Services you seek. Specify each service or function (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c Check this box if you prefer discounts on your bill. Check this box if you prefer reimbursement after paying your bill in full. Check this box if you do not have a preference.

Service or Function:	Quantity and/or Capacity:
High-Speed Connection to TETN Plus w/associated transport fees	provide 100MB, 250MB, 500MB, 1GB

10 Internal Connections Other than Basic Maintenance
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a YES, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 12.

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

Whether you check YES or NO, you must list below the Internal Connections Services you seek. Specify each service or function (e.g., a router, hub and cabling) and quantity and/or capacity (e.g., connecting 1 classroom of 30 students). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c Check this box if you prefer discounts on your bill. Check this box if you prefer reimbursement after paying your bill in full. Check this box if you do not have a preference.

11 Basic Maintenance of Internal Connections
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a YES, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):
 the Contact Person in Item 6 or the contact listed in Item 12.

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

Whether you check YES or NO, you must list below the Basic Maintenance Services you seek. Specify each service or function (e.g., basic maintenance of routers) and quantity and/or capacity (e.g., for 10 routers). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

<input checked="" type="checkbox"/> Check this box if you prefer discounts on your bill.	<input checked="" type="checkbox"/> Check this box if you prefer reimbursement after paying your bill in full.	<input checked="" type="checkbox"/> Check this box if you do not have a preference.
--	--	---

12 (Optional) Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the Authorized Person who signs this form.

Name: Justin Mabe	Title: Technical Support
Telephone number (903) 575 - 2760	
Fax number (903) 575 - 2618	
E-mail Address JMabe@reg8.net	

13a. Check this box if there are any restrictions imposed by state or local laws or regulations on how or when service providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or a Web address where they are posted and provide a contact name and telephone number.
See Texas Education Procurement Guidelines at: www.tea.state.tx.us/school.finance/audit/resguide13/purchase/pur.pdf Providers certified in the State of Texas to deliver services to school districts, government agencies, and ESCs may respond. High-bandwidth connection from Mt. Pleasant, TX needed. Provide incremental pricing: 100MB, 250MB, 500MB, & 1GB. Call or email the contact listed in (#12) for details.

Check this box if no state and local procurement/competitive bidding requirements apply to the procurement of services sought on this Form 470.

13b. If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, you may summarize below (including the likely timeframes). If you are requesting services for a funding year for which a Form 470 cannot yet be filed online, include that information here.

Block 3: Technology Resources

14. **Basic telephone service only:** If your application is for basic telephone service and voice mail only, check this box and skip to Item 16. Basic telephone service is defined as wireline or wireless single line voice service (local, cellular/PCS, and/or long distance) and mandatory fees associated with such service (e.g., federal and state taxes and universal service fees).

15. Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

a. Desktop software: Software required has been purchased; and/or is being sought.

b. Electrical systems: adequate electrical capacity is in place or has already been arranged; and/or upgrading for additional electrical capacity is being sought.

c. Computers: a sufficient quantity of computers has been purchased; and/or is being sought.

d. Computer hardware maintenance: adequate arrangements have been made; and/or are being sought.

e. Staff development: all staff have had an appropriate level of training /additional training has already been scheduled; and/or training is being sought.

f. Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Block 4: Recipients of Service

16. Eligible Entities That Will Receive Services:

Check the ONE choice (Item 16a, 16b or 16c) that best describes this application and the eligible entities that will receive the services described in this application. You will then list in Item 17 the entity/entities that will pay the bills for these services.

a. Individual school or single-site library.

b. Statewide application for (enter 2-letter state code) representing (check all that apply):

- All public schools/districts in the state:
- All non-public schools in the state:
- All libraries in the state:

If your statewide application includes INELIGIBLE entities, check here. If checked, complete Item 18.

c. School district, library system, or consortium application to serve multiple eligible entities:

Number of eligible sites	198
<i>For these eligible sites, please provide the following</i>	
Area Codes (list each unique area code)	Prefixes associated with each area code (first 3 digits of phone number) separate with commas, leave no spaces
903	346, 359, 367, 378, 379, 395, 427, 438, 439, 459, <input checked="" type="checkbox"/>

17. Billed Entities

17. Billed Entities: List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. If a Billed Entity cited on your Form 471 is not listed below, funding may be denied for the funding requests associated with this Form 470.

Entity	Entity Number

Northeast Texas Regional Education Telecommunications Network (NTxRETN)	150217
---	--------

18. Ineligible Participating Entities
 List the names of any entity/entities here for whom services are requested that are not eligible for the Universal Service Program.

Ineligible Participating Entity	Area Code	Prefix
---------------------------------	-----------	--------

Block 5: Certification and Signature

19. I certify that the applicant includes:(Check one or both.)
- a. schools under the statutory definitions of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C.Secs.7081(18) and (38), that do not operate as for-profit businesses, and do not have endowments exceeding \$50 million; and/or
 - b. libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges and universities).
20. I certify that all of the individual schools, libraries, and library consortia receiving services under this application are covered by technology plans that are written, that cover all 12 months of the funding year, and that have been or will be approved by a state or other authorized body, an SLD-certified technology plan approver, prior to the commencement of service. The plans were written at the following level(s):
- a. individual technology plans for using the services requested in the application, and/or
 - b. higher-level technology plans for using the services requested in the application, or
 - c. no technology plan needed; application requests basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only
21. I certify that I will post my Form 470 and (if applicable) make my RFP available for at least 28 days before considering all bids received and selecting a service provider. I certify that all bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals. I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the status and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.
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23. I acknowledge that support under this support mechanism is conditional upon the school(s) and/or library(ies) I represent securing access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support.
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26. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program.
27. Signature of authorized person:
28. Date (mm/dd/yyyy): 12/18/2009
29. Printed name of authorized person: David Mabe
30. Title or position of authorized person: Representative Director
- 31a. Address of authorized person: ESC Region VIII
PO Box 1894
City: Mt. Pleasant State: TX Zip: 75456-2602
- 31b. Telephone number of authorized person: (903) 575 - 2602
- 31c. Fax number of authorized person: (903) 5752618
- 31d. E-mail address number of authorized person: dmabe@reg8.net
- 31e. Name of authorized person's employer: Region VIII Education Service Center

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action.

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Please submit this form to:

**SLD-Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100**

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:

**SLD Forms
ATTN: SLD Form 470
3833 Greenway Drive
Lawrence, Kansas 66046
1-888-203-8100**

FCC Form 470
November 2004

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