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February 14, 2011

VIA ECFS

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*

REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

The Northeast Texas Regional Education Telecommunications Network (“NTRETN” or “Applicant”), by its attorneys, and pursuant to Sections 0.457, 0.459, 1.51 and 54.722 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) Rules, 47 C.F.R. §§ 0.457, 0.459, 1.51, 54.722, hereby submits this REDACTED public version of the above-referenced Request for Review of Decision of the Universal Service Administrator (“Request”).

NTRETN is filing the CONFIDENTIAL version of the attached Request, along with a copy of the Request for Confidential Treatment, via hand delivery, simultaneously with the submission of this redacted version.

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.

February 14, 2011
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Koves", with a long horizontal flourish extending to the right.

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

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February 14, 2011

VIA HAND DELIVERY

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*

REQUEST FOR CONFIDENTIAL TREATMENT

Dear Ms. Dortch:

Northeast Texas Regional Education Telecommunications Network (“NTRETN” or “Applicant”), by its attorneys, hereby requests confidential treatment pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457, 0.459, for a designated exhibit (“Designated Exhibit”)¹ to its Request for Review of Decision of the Universal Service Administrator (“Request”). NTRETN requests confidential treatment of a Services Agreement and Service Order Requests between the service provider Trillion Partners, Inc. (“Trillion”) and the E-rate applicant NTRETN. *See* 47 C.F.R. § 0.459(a). This redacted information is highly confidential commercial information that is not ordinarily disclosed to unrelated third parties because disclosure of the information could have adverse economic and competitive consequences for Trillion and NTRETN. Accordingly, the information qualifies for confidential

¹ NTRETN requests confidential treatment for designated portions of the exhibit labeled Exhibit 5 (Letter from Steven Augustino, Kelley Drye & Warren LLP on behalf of NTRETN, to Douglas May, Universal Service Administrative Company, Schools and Libraries Division – Consortium Review, Exhibits D & E (dated Oct. 15, 2010)).

February 14, 2011

Page Two

treatment under Exemption 4 of the Freedom of Information Act (“FOIA”) as “Trade secrets and commercial or financial information obtained from any person and privileged or confidential-categories of materials not routinely available for public inspection.” 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

The Commission’s rules allow persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) of the FOIA to file a request for non-disclosure pursuant to Section 0.459 of the Commission’s rules. 47 C.F.R. § 0.457(d)(2). Pursuant to Section 0.459(b) of the Commission’s rules, NTRETN hereby submits the following statement in support of confidential treatment of the Designated Exhibit:

1. Identification of specific information for which confidential treatment is sought, 47 C.F.R. § 0.459(b)(1):

NTRETN seeks confidential treatment of the Designated Exhibit because the information contained therein comprises commercially sensitive information that falls within Exemption 4 of the FOIA.

2. Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission, 47 C.F.R. § 0.459(b)(2):

NTRETN is filing the Designated Exhibit in a Request for Review of Decision of the Universal Service Administrator, in FCC proceeding CC Docket No. 02-6, requesting *de novo* review of a Funding Commitment Decision Letter issued by the Universal Service Administrative Company regarding NTRETN’s schools and libraries universal support mechanism commitments.²

3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged, 47 C.F.R. § 0.459(b)(3):

NTRETN’s Designated Exhibit contains specific information about NTRETN’s telecommunications service agreements that NTRETN does not ordinarily disclose. The Designated Exhibit for which NTRETN seeks confidential treatment accordingly contains sensitive financial and commercial information that competitors could use to NTRETN’s disadvantage and that of its service provider, Trillion. The Commission has broadly defined commercial information, stating that “[c]ommercial’ is broader than information regarding basic

² Funding Commitment Decision Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Karen Whitaker, NTRETN (dated December 14, 2010).

February 14, 2011

Page Three

commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations."³

4. Explanation of the degree to which the information concerns a service that is subject to competition, 47 C.F.R. § 0.459(b)(4):

Trillion provides telecommunications services in the United States subject to intense competition from numerous industry participants. Disclosure of information about the specific rates upon which Trillion provides service to NTRETN could be used by competitors or others to harm NTRETN and/or Trillion.

5. Explanation of how disclosure of the information could result in substantial competitive harm, 47 C.F.R. § 0.459(b)(5):

Release of the information for which NTRETN requests confidentiality could have a significant impact on NTRETN's operations and would provide others with information that may be used to undermine NTRETN's efforts.

6. Identification of any measures taken to prevent unauthorized disclosure, 47 C.F.R. § 0.459(b)(6):

Trillion requires all of its customers, including NTRETN, to maintain the confidentiality of the information contained in its Services Agreements and Service Order Requests. The Services Agreement includes a disclaimer "HIGHLY CONFIDENTIAL – COMPANY PROPRIETARY" and that "CONTENTS OF THIS AGREEMENT ARE NOT TO BE SHARED OR DISCUSSED WITH ANYONE OTHER THAN E-RATE OFFICIALS, OR [NTRETN] EMPLOYEES AND REPRESENTATIVES." The Service Order Requests include the disclaimer "HIGHLY CONFIDENTIAL – COMPANY PROPRIETARY" and that "THE CONTENTS OF THIS DOCUMENT AND ALL ATTACHMENTS ARE PROPRIETARY TO TRILLION PARTNERS, INC."

7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties, 47 C.F.R. § 0.459(b)(7):

The information contained in the Designated Exhibits is not available to the public and has not been disclosed to third parties.

³ *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

February 14, 2011
Page Four

8. Justification of period during which the submitting party asserts that the material should not be available for public disclosure, 47 C.F.R. § 0.459(b)(8):

NTRETN respectfully requests that the Commission withhold the information contained in the designated exhibit from public inspection indefinitely in light of its highly sensitive nature.

* * *

As demonstrated above, the information for which NTRETN seeks confidential treatment is entitled to exemption from disclosure under both FOIA and the Commission's rules.

If any person or entity requests disclosure of the enclosed Designated Exhibit, please notify counsel for NTRETN immediately in order to permit it to oppose such request or take such other action to safeguard its interests as it deems necessary. Please direct any questions as to this matter, including the request for confidential treatment, to the undersigned.

Respectfully submitted,



Steven A. Augustino
*Counsel to the Northeast Texas Regional
Education Telecommunications Network
(NTRETN)*

Enclosure

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

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

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

Steven A. Augustino
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*Counsel to Northeast Texas Regional Education
Telecommunications Network*

Date: February 14, 2011

SUMMARY

The Northeast Texas Regional Education Telecommunications Network (“NTRETN” or “Applicant”), a consortium of non-profit public school districts, requests *de novo* review of a Funding Commitment Decision Letter issued by the Universal Service Administrative Company (“USAC”) regarding Funding Year (“FY”) 2010 schools and libraries universal support mechanism (“E-rate”) commitments. This Request for Review is NTRETN’s second Request for Review involving E-rate applicant NTRETN and its service provider Trillion Partners, Inc. (“Trillion”). NTRETN has a related Request for Review pending before the Commission involving FY 2009 E-rate commitments, which addresses many of the same issues raised for FY 2010.

Since 2004, NTRETN has contracted with Trillion to construct and maintain a state-of-the-art wireless wide area network (“WAN”) that now provides Internet access, voice-over-Internet-Protocol (“VoIP”) telephony and video conferencing to 51 rural school districts – districts that would not have such services, but for the Universal Service Fund. Despite the undeniable benefits of the network to students in northeast Texas, USAC seeks to deny funding for 2010 based on nominal alleged “gifts” from Trillion to a NTRETN representative in years prior. In addition, USAC found some of NTRETN’s Letters of Agency deficient. However, NTRETN has already demonstrated to the Commission in its FY 2009 Request for Review that the alleged “gifts” to NTRETN at issue were permissible under applicable Commission rules. Notably, USAC does not base its FY 2010 funding denial on new “gifts” – rather, it relies on the same alleged “gifts” with which it based its FY 2009 funding denial. Thus, for the same reasons cited in NTRETN’s FY 2009 Request for Review, USAC’s denial here is erroneous.

With respect to the Letters of Agency at issue, NTRETN provided sufficient documentation to USAC demonstrating that NTRETN had actual authorization from the subject school districts to file E-rate applications on behalf of consortium members. 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 2010. First, as asserted in its FY 2009 Request for Review, NTRETN seeks *de novo* review of USAC's unjustified interpretation of the Commission's competitive bidding rules and application of federal gift standards.¹ Second, NTRETN seeks *de novo* review of USAC's novel assertion that ordinary contacts during the course of a multi-year relationship and nominal "gifts" are inconsistent with the Commission's competitive bidding rules. Third, NTRETN seeks *de novo* review of USAC's finding that NTRETN's Letters of Agency or other documentation submitted to USAC did not authorize NTRETN to request telecommunications services on its FCC Form 471.

Because NTRETN's contacts with Trillion were permissible and did not undermine the competitive bidding process and because NTRETN has sufficient authority to request telecommunications services on its Form 471, USAC's E-rate funding decision regarding NTRETN's FY 2010 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.

¹ See 47 C.F.R. § 54.504.

TABLE OF CONTENTS

	Page
SUMMARY.....	i
I. BACKGROUND	2
A. Northeast Texas Regional Education Telecommunications Network	2
B. NTRETN’s Wireless Wide Area Network	2
C. USAC’s FY 2010 Funding Commitment Decision Letter.....	3
II. ARGUMENT.....	5
A. De Novo Standard of Review	5
B. NTRETN Conducted a Fair and Open Competitive Bidding Process Free From Conflicts of Interest.....	5
C. NTRETN Was Authorized to Request Telecommunications Services.....	6
1. Person Authorized to File the Applications.....	10
2. Entity Authorizing Applications.....	12
3. Specific Timeline Covered by the Authorization	12
4. Consortium Official Signature, Date, and Title.....	13
5. Types of Services Covered	14
III. CONCLUSION.....	15

**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**

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 the 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") 2010 schools and libraries universal support mechanism ("E-rate") commitments ("FY 2010 FCDL").² This Request for Review is NTRETN's second Request for Review involving its service provider Trillion Partners, Inc. ("Trillion"). NTRETN has a related Request for Review pending before the Commission involving FY 2009 E-rate commitments, which addresses many of the same issues raised for FY 2010. The FY 2010 FCDL was issued to NTRETN on December 14, 2010 and therefore this

² Funding Commitment Decision Letter from the Schools and Libraries Division, Universal Service Administrative Company, to Karen Whitaker, NTRETN (dated December 14, 2010), attached hereto as Exhibit 1 ("FY 2010 FCDL"). The following E-rate funding request numbers (FRNs) were denied funding by USAC: 2046646, 2046663, 2046703, 2046730, and 2046917.

appeal is filed within the requisite sixty (60) day time period pursuant to 47 C.F.R. §§ 54.720(a), 1.4(c), 1.4(j).

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. 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. The consortium comprises small rural, school districts that individually lack the resources on their own to deploy high-bandwidth broadband Internet for educational purposes. The *largest* school district in the consortium has approximately 5,000 students; most school districts have only a few hundred 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.³

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. 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

³ *Id.* at 2.

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.⁴

C. USAC's FY 2010 Funding Commitment Decision Letter

By the Funding Commitment Decision Letter dated December 14, 2010, USAC's Schools and Libraries Division denied NTRETN's FY 2010 E-rate funding requests in the amount of **\$1,434, 231.79** requested in its FCC Form 471 Application 756191.⁵ USAC's basis for denial is twofold.

First, USAC's basis for denial of each Funding Request Number (FRN)⁶ included in NTRETN's Form 471 Application 756191 states in full:

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 statement tracks verbatim USAC's funding denial for FY 2009 commitments.⁷ There are no new facts alleged or at issue that were not already raised in USAC's FY 2009 FCDL and addressed in NTRETN's FY 2009 Request for Review. NTRETN hereby incorporates its FY

⁴ FY 2009 Request for Review at 3.

⁵ FY 2010 FCDL.

⁶ The following E-rate funding request numbers (FRNs) were denied funding by USAC: 2046646, 2046663, 2046703, 2046730, and 2046917.

⁷ See FY 2009 Request for Review at 4.

2009 Request for Review by reference.⁸ As asserted in the FY 2009 Request for Review, USAC's tortured interpretation of the Commission's competitive bidding rules and application federal gift standards is unlawful and without merit on the facts.

Second, separate from the competitive bidding rationale, USAC denied two FRNs⁹ included in NTRETN's Form 471 on the following basis:

Funding was denied because the Letters of Agency or other documentation authorizing the filing of the Form 471 did not authorize the services requested on the Form 471.

This bare explanation is the entirety of the analysis provided by USAC. It is our understanding that USAC alleges that the letters of agency were deficient because they failed to authorize NTRETN to request "telecommunications services" on the consortium member's behalf.¹⁰ During the course of USAC's review, NTRETN responded to these claims with additional documentation, which showed that NTRETN was actually authorized to request telecommunications services on behalf of consortium members. USAC failed to consider or address that documentation.

⁸ See Request for Review by Northeast Texas Regional Education Telecommunications Network of Decision of the Universal Service Administrator, CC Docket No. 02-6 (filed Dec. 6, 2010), attached hereto as Exhibit 2 ("FY 2009 Request for Review").

⁹ FRNs 2046703 and 2046917.

¹⁰ Letter from Douglas May, Universal Service Administrative Universal Service Administrative Company, Schools and Libraries Division – Consortium Review, to Karen Whitaker, Deputy Executive Director for Administrative Services, Region VIII ESC (dated Sept. 23, 2010), attached hereto at Exhibit 3; Letter from Douglas May, Universal Service Administrative Universal Service Administrative Company, Schools and Libraries Division – Consortium Review, to Karen Whitaker, Deputy Executive Director for Administrative Services, Region VIII ESC (dated Nov. 1, 2010), attached hereto at Exhibit 4; see Letter from Steven Augustino, Kelley Drye & Warren LLP on behalf of NTRETN, to Douglas May, Universal Service Administrative Company, Schools and Libraries Division – Consortium Review at page 2 (dated Oct. 15, 2010), attached hereto at Exhibit 5 ("October Response").

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.¹¹ 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."¹²

B. NTRETN Conducted a Fair and Open Competitive Bidding Process Free From Conflicts of Interest

As NTRETN demonstrated in its FY 2009 Request for Review, NTRETN has at all times over the course of its multi-year contractual commitments with Trillion complied with the Commission's competitive bidding rules. USAC alleges in both its FY 2009 and 2010 funding denials that NTRETN failed to conduct a fair and open competitive bidding process free from conflicts of interest due to alleged acceptance of impermissible "gifts" by a NTRETN employee. While USAC does not identify the exact basis for denial for either FY 2009 or 2010, it is our understanding USAC bases its denials on an inapplicable federal gift standard for contacts that preceded the competitive bidding window for FY 2010. The factual basis for USAC's FY 2009 and 2010 denials stem from the same alleged conduct of one representative of NTRETN and Trillion representatives from a period of 2004 to 2009. NTRETN previously addressed these factual allegations in its FY 2009 Request for Review. As shown there, USAC's

¹¹ FY 2009 Request for Review at 5 (citing 47 C.F.R. § 54.723).

¹² *Id.* at 5 (citing 47 C.F.R. § 54.702(c)).

application of the Commission’s competitive bidding rules is contrary to law because: (1) USAC applies on an inapplicable gift standard as a basis for a competitive bidding violation; (2) contacts with an existing service provider over the course of multi-year contracts do not implicate fair and open competitive bidding; and (3) nominal “gifts” do not implicate fair and open competitive bidding.

C. NTRETN Was Authorized to Request Telecommunications Services

The only new aspect of this appeal relates to NTRETN’s request for funding for analog telephony and voice-over-the-Internet (“VoIP”) services purchased by NTRETN’s school districts. NTRETN provided letters of agency (LOA) and other documentation to establish actual authority to request telecommunications services on its Form 471. USAC’s denial improperly rejects this documentation.¹³ NTRETN submitted LOAs to USAC that authorized NTRETN to request “Internet access and internal connections,” inadvertently omitting specific reference to “telecommunications services”¹⁴ despite requesting these services on Form 471. When USAC first inquired about the LOAs, NTRETN responded that the omission was inadvertent, and that consortium members did actually authorize NTRETN to submit E-rate applications on their behalf for telecommunications services in addition to other supported services. As evidence of this authorization NTRETN submitted: (1) letters from all 51 consortium school districts clarifying that the LOAs were inclusive of telecommunications services; and (2) other documentation (as discussed herein) in lieu of an LOA. Under FCC

¹³ Moreover, USAC should not have denied the entire application on this ground. Deficient letters of agency were alleged for only two FRNs 2046703 and 2046917 on the Form 471 Application 756191. To deny an entire application based on allegedly deficient letters of agency for only two funding requests would unfairly penalize the rest of the funding for the consortium members.

¹⁴ Attached hereto as Exhibit 6.

precedent, the documentation provided by NTRETN remedied any alleged deficiencies in its member's LOAs.

The Commission requires E-rate applicants to produce evidence from each of its members expressly authorizing the consortium leader to submit an application on its behalf. This requirement is intended to ensure that consortium members were *actually aware* of the funding application.¹⁵ The Commission requires an applicant to demonstrate five elements of its authorization to submit an E-rate request: (1) the name of the person filing the application; (2) the name of the person authorizing the filing of the application (the entity that will receive E-rate discounted services); (3) the specific time frame covered; (4) the signature date, and title of an official who is an employee of the entity authorizing the filing of the application; and (5) the type of services covered.¹⁶ This information may be included on an LOA or, in lieu of an LOA, "other documentation may be accepted as proof of authorization."¹⁷ Further, the Commission has held that deficient LOAs may be remedied on appeal with documentation, such as service contracts, which taken together, set forth the five elements of an LOA.¹⁸

Recently, in *Cornerstones of Care* the Commission granted *all* 10 appeals of USAC decisions denying E-rate funding based upon alleged LOA deficiencies.¹⁹ One of the

¹⁵ See *id.* at 2, note 5.

¹⁶ October Response at 2, note 7; see also, November Response at 3, notes 6, 10.

¹⁷ *Id.* at 2, note 6; see also, Letter from Steven Augustino, Kelley Drye & Warren LLP on behalf of NTRETN, to Douglas May, Universal Service Administrative Company, Schools and Libraries Division – Consortium Review at page 2, note 2 (dated Nov. 11, 2010), attached hereto at Exhibit 7 ("November Response").

¹⁸ See Requests for Review of Decisions of the Universal Service Administrator by Advanced Education Services, et al., Schools and Libraries Universal Service Support Mechanism, *Order*, DA 07-4973, 22 FCC Rcd 21513, 21516-21517 ¶ 8 (2007) ("*Advanced Education*").

¹⁹ November Response at 2, note 3 (citing *Cornerstones of Care*).

appeals is particularly instructive here. In *Cornerstones of Care*, an E-rate applicant, Hacienda La Puente Unified School District (“Hacienda”), was denied E-rate funding because it failed to provide proof of authorization. Hacienda submitted letters on appeal to the FCC demonstrating that schools in Hacienda were members of a consortium and that they were aware of the FCC Form 471 filed on their behalf.²⁰ The Commission held that the letters, taken together, identified the five elements of an LOA and sufficiently established Hacienda’s authority to represent consortium members.²¹

NTRETN’s proof of authorization is at least as strong as that presented by Hacienda. As evidence of authorization, NTRETN submitted to USAC letters from each relevant member school clarifying that its previously submitted LOAs were “inclusive of telecommunications services” and that the omission of telecommunications services in the original LOA was an oversight.²² While these letters do not serve as a replacement to the original LOAs, they demonstrate the understanding of the consortium school districts that telecommunications services were intended to be included in the original LOAs. The letters remedy the deficiency in the originally submitted LOAs by clarifying the “types of services covered” element – *i.e.* telecommunications services.²³ The original LOAs coupled with the clarifying letters satisfy all five elements of an LOA and should have been sufficient to

²⁰ November Response at 2-3.

²¹ *Id.*

²² Supplemental letters clarifying NTRETN consortium-member’s original letters of agency are attached hereto at Exhibit 8.

²³ *See Advanced Education*, 22 FCC Rcd at 21516-21517 ¶ 8.

demonstrate *actual authority* under the FCC’s standard for NTRETN to request telecommunications services on Form 471.²⁴

These clarifying letters are sufficient proof of authorization, even though they are dated after the original Form 471 certification.²⁵ First, the original LOAs were written before certification and the letters submitted merely clarify the authorization to submit funding for “Internet access and internal connections.” The letters clarify that this includes VoIP services, which some applicants request under the telecommunications category. Second, the Commission has held that deficient LOAs may be remedied by evidence on appeal. In *Cornerstones of Care*, for example, the Commission allowed an E-rate consortium applicant to submit to USAC *updated LOAs* to remedy the fact that previously submitted LOAs were not dated before the submission of an FCC Form 471 application because the record showed that the consortium members were *actually authorized* to submit E-rate applications.²⁶ At the very least, the Commission should direct USAC to accept NTRETN’s updated LOAs, rather than deny E-rate funding, because the LOAs and clarifying letters establish that NTRETN has actual authority.

In further support of NTRETN’s authorization, NTRETN also submitted to USAC additional documentation in the form of services agreements and orders, that demonstrated proof of authorization for NTRETN to submit applications for telecommunications

²⁴ See October Response at 2-7.

²⁵ FCC Form 471 Application 756191 (indicating a signature date of February 16, 2010); *compare with* Letters from NTRETN’s 51 Consortium Members to USAC, attached hereto as Exhibit 8 (dated shortly after February 16, 2010).

²⁶ In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Cornerstones of Care, et al., Schools and Libraries Universal Support Mechanism, *Order*, DA 10-2071, CC Docket No. 02-6, File Nos. SLD-586498, *et al.* at *9 ¶¶ 16-17 (rel. Oct. 28, 2010), as corrected by *Erratum*, CC Docket No. 02-6, File Nos. SLD-586498, *et al.* (rel. Nov. 4, 2010) (“*Cornerstones of Care*”)

services support on behalf of consortium members. NTRETN's documentation taken together, like Hacienda in *Cornerstones of Care*, identifies the five elements of an LOA establishing NTRETN's authority to request telecommunications services on FCC Form 471. NTRETN submitted to USAC documentation demonstrating its authority to request telecommunications services support, including: (1) a copy of the Texas Interlocal Cooperation Act authorizing consortia like NTRETN; (2) the Interlocal Contract establishing NTRETN, which authorizes NTRETN to seek government and grant funding on behalf of the members; (3) the services agreement between NTRETN and the service provider providing for analog telephony and VoIP services; and (4) certain individual Service Order Requests between consortium member school districts and the service provider ordering analog telephony and VoIP services.²⁷ Collectively, this documentation demonstrates that each school district selecting analog telephony and VoIP services has authorized NTRETN to submit E-rate funding requests on its behalf for FY 2010, satisfying the five elements of an LOA. NTRETN's compliance with the five elements is summarized below:

1. Person Authorized to File the Applications

Under Texas state law, NTRETN is explicitly authorized to act on behalf of its member school districts. On April 9, 1997, pursuant to the Texas Interlocal Cooperation Act, public independent school districts in northeast Texas and the Region VIII ESC²⁸ entered into an Interlocal Contract agreement establishing the NTRETN consortium as an administrative agency.²⁹ The Interlocal Contract coupled with the Services Order Requests and the Services

²⁷ October Response at 3, notes 10, 11, 12, 13.

²⁸ October Response at 4, note 14.

²⁹ *Id.* at 4, note 15.

Agreement provides the names of the entities filing and authorized to file the FY 2010 E-rate Applications. Specifically, Section 5.2 of the Services Agreement between NTRETN and the service providers *requires* NTRETN to submit E-rate funding requests and all applicable USAC forms to USAC – which encompasses Form 471.³⁰ Further, the Service Order Requests explicitly made subject to the Services Agreement, thereby incorporating the provisions that designate NTRETN as the entity required to submit an E-rate application for the services.

This statutory authority is sufficient to demonstrate authorization, separate and apart from the LOAs that NTRETN produced. NTRETN’s authority is inherent in the Texas Interlocal Cooperation Act. Interlocal Contracts are authorized by Texas state law to increase efficiency and effectiveness of local governments, including school district and education service centers,³¹ by authorizing them to contract with one another.³² The Commission has specifically cited state statutes similar to the Texas Interlocal Cooperation Act as examples of documentation in lieu of an LOA that establish authorization to submit E-rate requests.³³ Interlocal Contracts must be authorized by the governing body of each party to the contract, state the duties of the contracting parties, and stipulate that each party to the contract pay for the performance of governmental functions.³⁴ The Interlocal Contract entered between the member school districts grants the NTRETN consortium the power to “[a]pply for and receive grants and other funding from governmental and private sources...”³⁵ The Interlocal Contract also establishes a Board of

³⁰ *Id.* at 4, note 16.

³¹ *Id.* at 4, note 14.

³² *Id.* at 4, note 18.

³³ *Cornerstones of Care*, DA 10-2071, at *2 ¶ 4.

³⁴ October Response at 4, note 19.

³⁵ *Id.* at 4, note 20.

Directors to manage the consortium, which has the *duty to* “seek sources of funding for Network activities, apply for grants available to [NTRETN] by virtue of its management of the Network, or otherwise, and coordinate any grant applications made by the Members...”³⁶ Indeed, the very purpose of the consortium is to take coordinated actions on behalf of the member school districts. Thus, by entering the Interlocal Contract, the signatory parties grant the NTRETN consortium the authority to file E-rate applications on their behalf. USAC’s rejection of this evidence is erroneous.

2. Entity Authorizing Applications

The Services Agreement and Service Order Requests establish that the named school districts agreed to order the services as outlined, which were submitted to the service provider. The Service Order Requests and Services Agreement provide the names of the persons authorizing the filing of the FY 2010 Applications – the NTRETN consortium Board President. The Interlocal Contract grants the NTRETN consortium president the authority to sign the Service Order Requests and Services Agreement on behalf of the consortium member school districts.

3. Specific Timeline Covered by the Authorization

NTRETN is specifically authorized for a specific period of time – five years in this instance. The Interlocal Contract submitted to USAC provided the specific timeline covered by the agreement and authorization. The Interlocal Contract provides that the agreement will continue for a period of ten years from the date of the agreement, and for successive five year terms thereafter. The Interlocal Contract was renewed in 2007 and therefore is in effect for a

³⁶ *Id.* at 5, note 21.

finite five year term, set to expire in 2012. The authorization, therefore, is not an “open ended” commitment such as “until cancelled by either party.” Additionally, the Services Agreement between NTRETN and the service provider also provides for a specific term – 5 years from the commencement date.³⁷

Finally, we note that the Commission held that the lack of a specified timeframe on an LOA is not a “fatal mistake” when consortia members clearly know that the consortium is applying for funding on their behalf.³⁸ Thus, even assuming *arguendo* that the Interlocal Contract does not contain a specific time period, the contract shows that the consortium members clearly knew that NTRETN was applying for funding on their behalf.³⁹ This other evidence overcomes any reservations about the duration of the designation.

4. Consortium Official Signature, Date, and Title

The Services Agreement and Services Order Requests contain the signature, date, and title of an official who is an employee of the entity authorizing the filing of the FY 2010 Applications.⁴⁰ The Services Agreement and Service Order Requests agreeing to purchase services from the service providers are signed by Tommy Long, including his title as President of NTRETN’s Board of Directors, with the signature date.⁴¹ Mr. Long had the authority to sign on

³⁷ *Id.* at 5, note 22. The Services Agreement between Trillion Partners, Inc. and NTRETN (signed Feb. 16, 2006) (“2006 Services Agreement”). The 2006 Services Agreement is the relevant services agreement because the two FRNs 2046703 and 2046917 that were alleged by USAC to have deficient letters of agency were requesting services in furtherance of the 2006 Services Agreement. *See* FCC Form 471 Application 756191.

³⁸ October Response at 5, note 23.

³⁹ *Id.* at 5, note 24.

⁴⁰ *Id.* at Exhibit D, E.

⁴¹ *Id.* at Exhibit D, E.

behalf of the individual consortium member school districts by virtue of the Interlocal Contract, which grants NTRETN this authority.

5. Types of Services Covered

USAC alleges in its FY 2010 funding denial that telecommunications services were not included in its member's LOAs, therefore NTRETN was not authorized to request these services on behalf of the consortium on Form 471. In this case, the Services Agreement entered between NTRETN and the service provider provides a "Description of Services," which provides evidence of the types of services covered under agreement of consortium members. Included in the Description of Services is Voice-over-the-Internet ("VoIP") services, referred to as "WAN Voice Service" under the Services Agreement, and "analog phone service."⁴² Clearly, the specific service at issue – telecommunications services – is referenced in the contracts between Trillion, NTRETN and consortium-member school districts. Further, as noted above, letters from consortium members to USAC clarifying the LOAs attested to NTRETN's authority to request telecommunications services. These letters from consortium school districts provide other documentation to support *actual* authorization of NTRETN to request telecommunications services.

In summary, NTRETN, like Hacienda in *Cornerstones of Care*, submitted evidence to USAC demonstrating consortium membership and that members were aware of the FCC Form 471 and services requested filed on their behalf. NTRETN's Interlocal Contract, which created NTRETN, demonstrates that the school districts are members of NTRETN. Further, the Service Order Requests and Services Agreement demonstrate that member school

⁴² *Id.* at 6, note 25 (Exhibit D).

districts were *aware* of the FCC Form 471 services requested – including telecommunications services – would be filed on their behalf.⁴³ As with Hacienda, documentation provided to USAC should sufficiently establish NTRETN’s authority to request telecommunications services on behalf of consortium members.

Finally, we note that the VoIP services requested in the Form 471 Application are included in the initial LOA submitted by NTRETN. The Commission has not yet classified interconnected VoIP service as telecommunications service or an information service.⁴⁴ USAC in its *Eligible Services List Schools and Libraries Support Mechanism for Funding Year 2010* notes that interconnected VoIP could be classified as either telecommunications services or Internet access.⁴⁵ The Commission has concluded, as USAC proposed in its Eligible Services List submission, that interconnected VoIP service may be listed in both telecommunications and Internet access categories.⁴⁶ The original LOAs requested “Internet access and internal connections.” Therefore, USAC should have at the very least approved the VoIP services portion of the FRNs as “Internet access,” relying on NTRETN’s initial LOAs as evidence of authorization for these requests, or as telecommunications services, relying on the other evidence discussed herein.

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

⁴³ See November Response at 4, note 11 (citing *Cornerstones of Care*, DA 10-2071 ¶ 12).

⁴⁴ October Response at 6, note 26.

⁴⁵ *Id.* at 7, note 28.

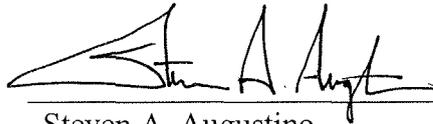
⁴⁶ *Id.* at 7, note 29.

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 2010 alone, and has put this funding to good use by enriching the education of students with a robust wireless WAN. Denial of NTRETN's E-rate funding does not serve the goals of Universal Service and would severely impair the schools and school districts that are members of NTRETN. The ultimate effect of a funding denial would be to throw out all the good achieved by NTRETN, hindering student access to the educational benefits of high-speed Internet access.

For the foregoing reasons, NTRETN respectfully requests the Commission to reverse USAC's 2010 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**



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Date: February 14, 2011

CERTIFICATE OF SERVICE

I, Christopher S. Koves, hereby certify that on February 14, 2011 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:

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