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March 20, 2012

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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

ATT: Telecommunications Access Policy Division

Re: Petition for Reconsideration

Requests for Review of Decisions of the Universal Service Administrator
by Charlton County School System, Folkston, Georgia, et al., File Nos.
SLD-658765, *et al.*; DA 12-260, CC Docket No. 02-6

Dear Ms. Dortch:

On behalf of Trillion Partners, Inc. ("Trillion"), enclosed please find a Petition for Reconsideration of the Telecommunications Access Policy Division's order with DA 12-260 released on February 23, 2012 denying the appeal of E-Rate applications filed by Lake Pend Oreille School District.

Should you have any questions or concerns, please contact the undersigned.

Respectfully submitted,

/s/ Henry M. Rivera

Henry Rivera
Counsel to Trillion Partners, Inc.

Attachment

cc: Tent Harkrader
Gina Spade

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

In the Matter of)	
)	
Requests for Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Charlton County School System)	File Nos. SLD-658765, <i>et al.</i>
Folkston, Georgia, <i>et al.</i>)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

PETITION FOR RECONSIDERATION

Trillion Partners, Inc. (hereinafter “Trillion”), through counsel and pursuant to Section 1.106 of the Federal Communications Commission’s (“FCC” or “Commission”) rules,¹ hereby petitions the Telecommunications Access Policy Division (“Division”) of the Commission’s Wireline Competition Bureau for reconsideration of the above-captioned Order denying appeals filed by Trillion of applications filed by Lake Pend Oreille School District (“District”).²

I. Background

On September 28, 2010, the Universal Service Administrative Company (“USAC”) issued a Funding Commitment Decision Letter (“FCDL”) denying the

¹ 47 C.F.R. § 1.106.

² *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Charlton County School System, Folkston, Georgia, et al., File Nos. SLD-658765, et al.; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, DA 12-260, Order (Telecommunications Access Policy Division, rel. Feb. 23, 2012) (“Order”).*

District's E-Rate application for funding year 2010.³ On September 29, 2010, USAC issued a FCDL denying the District's E-Rate application for funding year 2009.⁴ The FCDLs indicate that the funding request was denied because the District "did not conduct a fair and open competitive bidding process" and because the District "engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process."

On November 12, 2010, the District filed with the Commission an appeal of USAC's decisions denying the District's applications for funding years 2009 and 2010.⁵ On November 19, 2010, Trillion filed with the Commission appeals of USAC's decisions denying the District's applications for funding years 2009 and 2010.⁶

On February 23, 2012, the Division issued a two-paragraph *Order* denying the appeals filed by Trillion.⁷ As demonstrated below, the *Order* erred in concluding that there was a violation of the Commission's rules.

³ Funding Commitment Report from USAC, Schools and Libraries Division (dated Sept. 28, 2010) regarding FY 2010 FCC Form 471 application 736611, FRNs 1990460 and 2019726 (Attached as Exhibit A).

⁴ Funding Commitment Report from USAC, Schools and Libraries Division (dated Sept. 29, 2010) regarding FY 2009 FCC Form 471 application 666055, FRN 1818465 (Attached as Exhibit B).

⁵ Request for Review by Lake Pend Oreille School District, CC Docket No. 02-6, dated Nov. 12, 2010.

⁶ Letters from Trillion Partners, Inc. to the Federal Communications Commission, Telecommunications Access Policy Division, CC Docket No. 02-6 (dated November 19, 2010). In addition, Trillion had previously filed with the Commission a Master Appeal addressing the denial of applications and rescission of funding commitments by USAC of many of Trillion's customers, including the District. *See* Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 3, 2010).

⁷ *Order*, ¶ 1.

II. The Division Fails to Provide a Reasoned Analysis for its Decision.

It is well established that “[a]n agency is required to make its decision ‘based on a consideration of the relevant factors.’”⁸ The *Order*, however, fails to explain why the appeals were denied. The *Order* merely states that, “Based on our review of the record, we find that petitioners violated the Commission’s competitive bidding requirements” and that such denial is “consistent with precedent.”⁹ Other than this reference to the “record,” there is no actual discussion of the record, the arguments and evidence presented by either Trillion or the District, or why those arguments and evidence were found not to be persuasive. In addition, the facts in the cases cited by the Commission as precedent are inapposite to the facts in this case. Because the *Order* contains no discussion of what actions by either the District and Trillion violated the competitive bidding requirements, the *Order* fails to articulate any connection, much less a rational connection, between the facts of this case and the conclusion that there was a violation of the Commission’s rules.¹⁰ Indeed, the courts have held that failure to respond to the arguments presented by a petitioner or to provide a “reasoned analysis” of the factors it considered in making its decision renders an agency’s decision arbitrary and capricious.¹¹

⁸ *Natural Res. Def. Council, Inc. v. EPA*, 790 F.2d 289, 297 (3d Cir. 1986) (quoting *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 285 (1974)).

⁹ *Order*, ¶ 1.

¹⁰ See *Latino Issues Forum v. EPA*, 558 F.3d 936, 941 (9th Cir. 2009) (stating that the general standard of review for agency actions set forth in the Administrative Procedure Act requires an agency to articulate a rational connection between the facts found and the choice made); *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1032 (9th Cir. 2008) (“[C]ourts must carefully review the record to ensure that agency decisions are founded on a reasoned evaluation of the relevant factors...”); (citing *Friends of Yosemite Valley v. Norton*, 348 F.3d 789, 793 (9th Cir. 2003); *Environmental Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 858 n.36 (9th Cir. 2003), *cert. denied*, 541 U.S. 1085 (2004) (“[t]he agency must articulate a rational connection between the facts found and the conclusions made.”) (citation omitted)).

¹¹ *Motor Vehicle Mfg. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 57 (1983); see also *id.* at 43, 50-51 (failure to respond to commenters’ arguments renders agency decision arbitrary and capricious); *Darrell Andrews Trucking, Inc. v. Fed. Motor Carrier Safety Admin.*, 296 F.3d 1120, 1134-35 (D.C. Cir. 2002) (“substantial” argument “requires an answer from the agency”); *Iowa v. FCC*, 218 F.3d 756, 759

Given the lack of reasoned analysis in the *Order*, Trillion is at a loss to understand the basis for the denial of the appeals.

The precedent cited in the *Order* stands for the following principles: (i) there must be a fair and open competitive bidding process; (ii) all potential bidders must have access to the same information and be treated in the same manner throughout the procurement process; and (iii) service provider participation may suppress fair and open competitive bidding. Absent further guidance as to the reason for the denial, Trillion submits this petition demonstrating that the competitive bid process remained open and fair and its integrity was unharmed by the allegedly impermissible participation by Trillion.

III. The District Conducted a Fair and Open Competitive Bid Process.

The FCDLs failed to specify the facts upon which USAC relied in its decisions to deny and rescind the applications. Furthermore, as previously noted, the *Order* fails to specify the facts upon which it relied to uphold USAC's decisions. Therefore, Trillion can only assume that USAC's and the Commission's decisions were based on allegations raised in a USAC letter to the District dated June 4, 2010 (hereinafter, the "Intent to Deny Letter"), attached hereto as Exhibit C, in which USAC indicated that the funding requested for FY 2009 and 2010 would be denied because the District did not conduct a fair and open bidding process.¹² The Intent to Deny Letter specifically references meetings, email discussions, and verbal discussions between District employees and

(D.C. Cir. 2000) ("[T]he Commission's failure to address [commenters'] arguments requires that [the Court] remand this matter for the Commission's further consideration."); *NAACP v. FCC*, 682 F.2d 993, 997-98 (D.C. Cir. 1982) (FCC must respond to "significant comments made in the . . . proceeding") (citing *Ala. Power Co. v. Costle*, 636 F.2d 323, 384-85 (D.C. Cir. 1979)).

¹² Letter from USAC, Schools and Libraries Division, to Lisa Hals, Lake Pend Oreille School District, dated June 4, 2010 (regarding FY 2009 and FY2010 applications) (Attached as Exhibit C).

Trillion employees beginning in May 2005 through the award of the contract in February 2006.

The District did reach out to Trillion seeking information about its services prior to the posting of the Form 470. This was appropriate because applicants are encouraged to conduct due diligence to ensure that any request for E-Rate funds is targeted and appropriate. In response to the District's request for information, Trillion provided a *preliminary* design map and services proposal to the District. This was not Trillion's bid or final proposal, it was merely an overview of the type of system that could meet the District's unique needs as Trillion understood those needs at the time. Likewise, in response to a District employee's statement that he was working on its Form 470, Trillion referred the District to a neutral third-party E-Rate consulting group that could assist the District if needed. USAC asserted that these communications between the District and Trillion compromised the open and fair nature of the competitive bid process and "suggest that it was pre-determined" that the District would choose Trillion as its service provider. This is not accurate. The District conducted a fair and open bidding process and Trillion provided the most responsive and cost-effective bid, resulting in Trillion's selection as the District's service provider.

Mr. Bangle, the District's Technology Director, was solely responsible for preparing and posting the school's Form 470 and for preparing the Request for Proposals. On December 16, 2005, Mr. Bangle made a bona fide request for services by filing with USAC an FCC Form 470, which was posted to USAC's website for all potential competing service providers to review. After the Form 470 was posted, the school received and carefully evaluated the two bids it received: one from Conterra and one

from Trillion. The bid from Conterra was significantly more costly than Trillion's bid, and did not include services to one of the District's most rural schools. If the District had accepted Conterra's bid, the District would have been required to contract for additional services through a local service provider to that school, and there was no guaranty that the school would have been able to connect to the District's wide area network, which was an essential part of the District's request for services.

The District waited the requisite 28-days before selecting a vendor and the District's selection criteria confirm that price was the primary factor considered in its selection. Mr. Bangle did not have authority to enter into a contract with Trillion on behalf of the District and was not part of the selection committee. Superintendent Mark Berryhill signed the contract with Trillion. Mr. Berryhill had been delegated authority by the District's Board of Trustees to sign the contract. After Mr. Berryhill executed the contract, it was ratified by the Board of Trustees and there is no evidence of any communication or contact between any Trillion employee and any member of the Board of Trustees.

IV. The Communications between Trillion and the District did not Violate the Competitive Bidding Process.

The communication between Trillion and the District prior to the posting of the Form 470 did not violate the competitive bid rules. The Commission has acknowledged that prior to the posting of the Form 470, "[a] service provider may provide information to an applicant about products or services – including demonstrations."¹³ The District corresponded with Trillion as part of its investigation into what technologies could solve the difficulties other service providers had encountered in serving this large region with forests

¹³ *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, FCC 10-83, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, ¶ 30 (2010).

and mountainous terrain. Applicant have an obligation to “do their homework” to confirm that the equipment and services requested on the Form 470 will meet the goals of the schools’ technology plans and be an efficient use of the E-Rate funds.¹⁴

Further, an applicant may communicate with service providers during the Form 470 Window. The Commission clarified in the *Sixth Report and Order* that, “we do not prohibit communication during the 28-day waiting period.”¹⁵ Nor does the *Order* indicate that communication is inappropriate, providing that “potential bidders and service providers must have *access* to the same information and be treated in the same manner throughout the procurement process.”¹⁶ Following the posting of the Form 470 and Trillion’s submission of its bid, there was communication between Mr. Bangle and Trillion clarifying the scope of the requested services.¹⁷ There is no indication, however, in the extensive record in this matter that the District did not provide all service providers and potential bidders with the same *access* to District personnel during the competitive bid process.

V. The Cases Cited in the *Order* do not Support a Denial of Funding.

The cases cited in the *Order*, while they stand for the proposition that the bidding process must be open and competitive, do not support a denial of funding in this case.

¹⁴ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al.*, FCC 03-313, Order, 18 FCC Rcd 26406, 26423 (2003) (“*Ysleta*”).

¹⁵ *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, FCC 10-175, Sixth Report and Order, 25 FCC Rcd 18762, ¶ 92 (2010) Further, the procurement process was in compliance with Idaho bidding and procurement laws. School districts procure services pursuant to Idaho Code § 67-2806, which does not forbid any pre-bid communications or due diligence by a district.

¹⁶ *Order* ¶ 1, n. 1 (emphasis added), citing *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, FCC 00-167, Order, 16 FCC Rcd 4028, ¶ 10 (2000) (“*Mastermind*”).

¹⁷ See Email dated December 21, 2005 from Mr. Bangle to Trillion indicating that the District prefers WAN combined with internet connectivity.

In *Mastermind*, the Commission found violations of its competitive bidding rules when: (i) an individual associated with a service provider was listed as the contact person on an applicant's Form 470; (ii) an applicant delegated power in the competitive bid process to an entity that was also participating in the bidding; and (iii) one service provider is provided with information or access not also afforded to other service providers participating in the bid process.¹⁸ The *Dickenson* case, like the *Mastermind* case, also addressed a situation in which the applicant's Form 470 listed a contact person who was an employee of a service provider, which is not the case here.¹⁹ Neither Trillion nor anyone associated with Trillion was listed as the contact person on the District's Form 470. The District maintained control of the competitive bid process, which it initiated after conducting its "homework" on the technology best suited to its unique needs. Finally, there is no evidence that the District was unresponsive to requests for information by other service providers.

In *Approach Learning*, the Commission found a connection between the contact person listed on the Form 470 and the service provider that ultimately won the contract. The Commission believes "that the contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested."²⁰ The contact and communication between Trillion and the District was permissible and did not violate the rules and regulations that govern

¹⁸ *Mastermind*, 16 FCC Rcd 4028 (2000).

¹⁹ *Request for Review of the Decision of the Universal Service Administrator by Dickenson County Public Schools, Clintwood, Virginia; Federal-State Joint Board on Universal Service*, DA 02-1971, Order on Reconsideration, 17 FCC Rcd 15747 (Telecommunications Access Policy Division, rel. Aug. 9, 2002).

²⁰ *Requests for Review of the Decisions of the Universal Service Administrator by Approach Learning and Assessment Center, Santa Ana, CA, et al.*, DA 07-1332, Order, 22 FCC Rcd 5296, 5303, ¶ 19 (Wireline Competition Bureau 2007).

the E-Rate program. Trillion was not the contact person on the District's Form 470, nor did Trillion influence the District's competitive bidding process.

VI. Conclusion and Request for Relief

The Commission's two-paragraph *Order* denying the appeals filed by Trillion fails to provide any analysis for its decision. There is no discussion of the evidence and arguments presented by Trillion, which is contrary to the well-established principle that an agency is required to make its decision based on a consideration of the relevant facts. On the merits, the Commission's rules do not prohibit a potential service provider from discussing its product offerings with a school district, nor do they prohibit a school district from engaging in due diligence to determine what their needs are and the options available to them. Finally, the facts in the cases cited by the *Order* as precedent are inapposite to the facts in this case and, therefore, the cases cannot be precedent for this case.

For the reasons set forth above, Trillion respectfully requests reconsideration of the Division's *Order* and a grant of the appeals of the USAC orders specified above.

Respectfully submitted,

TRILLION PARTNERS, INC.

By: /s/ Henry M. Rivera

Henry M. Rivera
Edgar Class
Joan Stewart
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
Tel: (202) 719-7000

Its Attorneys

Dated: March 20, 2012

Exhibit A

Funding Commitment Report from USAC, Schools and Libraries
Division dated Sept. 28, 2010 (regarding FY2010 FCC Form 471
application 736611, FRNs 1990460 and 2019726)

FUNDING COMMITMENT REPORT
Service Provider Name: Trillion Partners, Inc
SPIN: 143025872
Funding Year: 2010

Name of Billed Entity: LAKE PEND OREILLE SCHOOL DISTRICT #84
Billed Entity Address: 901 TRIANGLE DRIVE
Billed Entity City: PONDERAY
Billed Entity State: ID
Billed Entity Zip Code: 83852
Billed Entity Number: 198474
Contact Person's Name: Lisa Hals
Preferred Mode of Contact: EMAIL
Contact Information: E-Rate@lposd.org
Form 471 Application Number: 736611
Funding Request Number: 1990460
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 203000000563675
Contract Number: na
Billing Account Number: N/A
Service Start Date: 07/01/2010
Contract Expiration Date: 06/30/2013
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$250,928.52
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$250,928.52

Applicant's Discount Percentage Approved by SLD: 75%
Funding Commitment Decision: \$.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: MR1: The shared discount was reduced to a level that could be validated by third party data. <><><><><> DR1: The ERN will be denied because you did not conduct a fair and open competitive bidding process. The documentation provided by you and/or the service provider indicates that the school district engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process which tainted the competitive bidding process. Trillion was consulted and/or offered details about services and products you were requesting on your FCC Form 470 and/or Request for Proposal (RFP). The competitive bidding process was influenced by Trillion when they assisted you in developing your services specifications for your FCC Form 470/or RFP. You failed to conduct a fair and open competitive bidding process free from conflicts of interest. This ERN 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 ERN, 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: 09/28/2010
Wave Number: 019
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

FUNDING COMMITMENT REPORT
Service Provider Name: Trillion Partners, Inc
SPIN: 143025872
Funding Year: 2010

Name of Billed Entity: LAKE PEND OREILLE SCHOOL DISTRICT #84
Billed Entity Address: 901 TRIANGLE DRIVE
Billed Entity City: PONDERAY
Billed Entity State: ID
Billed Entity Zip Code: 83852
Billed Entity Number: 198474
Contact Person's Name: Lisa Hals
Preferred Mode of Contact: EMAIL
Contact Information: E-Rate@lposd.org
Form 471 Application Number: 736611
Funding Request Number: 2019726
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 203000000563675
Contract Number: na
Billing Account Number: N/A
Service Start Date: 07/01/2010
Contract Expiration Date: 06/30/2013
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$34,704.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$34,704.00
Applicant's Discount Percentage Approved by SLD: 75%
Funding Commitment Decision: \$.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: MR1: The shared discount was reduced to a level that could be validated by third party data. <><><><><> DR1: The FRN will be denied because you did not conduct a fair and open competitive bidding process. The documentation provided by you and/or the service provider indicates that the school district engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process which tainted the competitive bidding process. Trillion was consulted and/or offered details about services and products you were requesting on your FCC Form 470 and/or Request for Proposal (RFP). The competitive bidding process was influenced by Trillion when they assisted you in developing your services specifications for your FCC Form 470/or RFP. You failed to conduct a fair and open competitive bidding process free from conflicts of interest. 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: 09/28/2010

Wave Number: 019

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

Exhibit B

Funding Commitment Report from USAC, Schools and Libraries
Division dated Sept. 29, 2010 (regarding FY2009 FCC Form 471
application 666055, FRN 1818465)

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

Name of Billed Entity: LAKE PEND OREILLE SCHOOL DISTRICT #84
Billed Entity Address: 901 TRIANGLE DRIVE
Billed Entity City: PONDERAY
Billed Entity State: ID
Billed Entity Zip Code: 83852
Billed Entity Number: 198474
Contact Person's Name: Lisa Hals
Preferred Mode of Contact: EMAIL
Contact Information: E-Rate@lposd.org
Form 471 Application Number: 666055
Funding Request Number: 1818465
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 203000000563675
Contract Number: NA
Billing Account Number: N/A
Service Start Date: 07/01/2009
Contract Expiration Date: 06/30/2013
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$250,928.52
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$250,928.52
Applicant's Discount Percentage Approved by SLD: 71%
Funding Commitment Decision: \$.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: The FRN will be denied because you did not conduct a fair and open competitive bidding process. The documentation provided by you and/or the service provider indicates that the school district engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process which tainted the competitive bidding process. Trillion was consulted and/or offered details about services and products you were requesting on your FCC Form 470 and/or Request for Proposal (RFP). The competitive bidding process was influenced by Trillion when they assisted you in developing your services specifications for your FCC Form 470/or RFP. You failed to conduct a fair and open competitive bidding process free from conflicts of interest. 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: 09/29/2010
Wave Number: 068
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

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

Name of Billed Entity: LAKE PEND OREILLE SCHOOL DISTRICT #84
Billed Entity Address: 901 TRIANGLE DRIVE
Billed Entity City: PONDERAY
Billed Entity State: ID
Billed Entity Zip Code: 83852
Billed Entity Number: 198474
Contact Person's Name: Lisa Hals
Preferred Mode of Contact: EMAIL
Contact Information: E-Rate@lposd.org
Form 471 Application Number: 666055
Funding Request Number: 1818472
Funding Status: Not Funded
Category of Service: Internet Access
Form 470 Application Number: 203000000563675
Contract Number: NA
Billing Account Number: N/A
Service Start Date: 07/01/2009
Contract Expiration Date: 06/30/2013
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$34,704.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$34,704.00

Applicant's Discount Percentage Approved by SLD: 71%
Funding Commitment Decision: \$.00 - Bidding Violation- SRC
Funding Commitment Decision Explanation: The FRN will be denied because you did not conduct a fair and open competitive bidding process. The documentation provided by you and/or the service provider indicates that the school district engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process which tainted the competitive bidding process. Trillion was consulted and/or offered details about services and products you were requesting on your FCC Form 470 and/or Request for Proposal (RFP). The competitive bidding process was influenced by Trillion when they assisted you in developing your services specifications for your FCC Form 470/or RFP. You failed to conduct a fair and open competitive bidding process free from conflicts of interest. 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: 09/29/2010

Wave Number: 068

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2011

Exhibit C

Letter from USAC, Schools and Libraries Division, to Lisa Hals,
Lake Pend Oreille School District, dated June 4, 2010 (regarding
FY 2009 and FY2010 applications)

Date: June 4, 2010

Lisa Hals
Lake Pend Oreille School District
(208) 263-5053 x210
Application Number(s): 666055, 736611

Response Due Date: June 21, 2010

Dear Ms. Hals:

We are in the process of reviewing Funding Year 2009 and FY 2010 Form(s) 471 to ensure that they are in compliance with the rules of the Universal Service program.

Funding Year 2009 Application 666055, FRNs 1818472, 1818465 and Funding Year 2010 Application 736611, FRNs 1990460, 2019726 will be denied for the following reasons:

Based on the documentation that has been provided to USAC, the entire Funding Request Numbers (FRNs) 1818472, 1818465, 1990460, and 2019726 will be denied because Lake Pend Oreille School District (Lake Pend) did not conduct a fair and open competitive bidding process. The Form 470 (No. 203000000563675) associated with these FRNs was posted on December 16, 2005 and the Contract Award Date was February 3, 2006.

- The documentation provided indicates that Jim Bangle (Lake Pend) and Doug Olin (Lake Pend) accepted meals, as well as a paid trip to Trillion's Open House in Canon City, Colorado, from Trillion prior to and during the process Lake Pend conducted to select a service provider to provide the goods and services that were included in the posted Form 470. Specifically, Trillion has provided documentation for the following meals and trips that were accepted and attended by Lake Pend employees:
 - On May 5, 2005, Kate Stetzner (Trillion) invited Jim Bangle (Lake Pend) to attend Trillion's Open House in Canon City, Colorado on May 19-20, 2005. According to your response, Jim Bangle and Doug Olin (Lake Pend) traveled to Canon City, Colorado and you confirmed that Trillion paid for Jim Bangle's and Doug Olin's expenses, including: rental car, air fare, meals, and hotel accommodations for the trip. On May 19, 2005, Jim Bangle and Doug Olin had lunch with Trillion representatives. According to Trillion documentation, the cost of the meal was \$48.53 (\$16.17/person).
 - On October 4, 2005, Trillion and Lake Pend employees had lunch. The receipt states the cost was \$45.00 (\$15.00/person).
 - On January 26, 2006, according to Trillion documentation, Lake Pend employees and Trillion representatives had lunch. The cost of this lunch was \$37.29 (\$12.43/person).

Jim Bangle's and Doug Olin's expenses for their trip to Colorado in May 2005 and the meals' values exceed the federal gifts standards of \$20/person/occasion not to exceed \$50/person/per calendar year. These trips and meals occurred in the months prior to Lake Pend's posting of its Form 470 (Application No.

include any costs associated with any internet connectivity, correct? Do I need to do a 470 for another company to be my internet connection, or do you do that, and it's factored into my cost?" On December 23, 2005, David White sent Lisa Hals (Lake Pend) an email noting that although the pole issue was important, that he would work "with Jim to get the proposal finished, and also to work out Internet access . . . More important is that we complete the 471 process first, and if that flies then we can begin the community work – does that sound OK with you?" On December 27, 2005, Jim Bangle provided David White with additional information about the district's Internet and filtering needs. On December 28, 2005, Trillion provided Lake Pend with a copy of its confidential services agreement to review. As noted above, on January 26, 2006, Trillion representatives had lunch with Lake Pend employees. The five-year contract, with three five-year extensions, was awarded to Trillion on February 3, 2006. (See Lake Pend.CB.Documents attachment.)

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. For additional guidance regarding the competitive bidding process, please refer to the USAC website at: <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx>.

If the entire FRNs should not be denied and you have alternative information, please provide the supporting documentation. We are including copies of the above referenced emails and meeting confirmations for your review, attached as Lake Pend.CB.Documentation.

Additionally, please answer the following questions so that we may complete our review.

- The email exchanges described in detail above, suggest it was pre-determined that Lake Pend would enter into a contract with Trillion prior to the Form 470 being posted and prior to the 28 competitive bidding window. For example, Jim Bangle's December 20, 2005 To Do List noted that he needed to prepare the "471 for Trillion," and is dated the day after Lake Pend posted its Form 470. These emails also suggest that Trillion was intimately involved in developing the specifications you would seek on your Form 470 and perhaps was involved in the drafting of the language to be used in the Form 470. Please review these emails and explain in detail why these discussions took place prior to the submission of the Form 470. Please indicate if Trillion was involved in the development of the

203000000563675) on December 16, 2005 and subsequent award of the contract to Trillion on February 3, 2006. The January 26, 2006 meal occurred during the competitive bidding period. Based on a pattern of gifts received throughout the year the entire competitive bidding process is deemed tainted. Based on this information, it appears that you did not conduct a fair and open competitive process, free from outside influence. 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>. (Copies of the expense reports and receipts are attached as Lake Pend.Meals.Trips.)

- The documentation also indicates that Jim Bangle (Lake Pend) engaged in meetings, e-mail discussions, and verbal discussions with Trillion employees beginning in May 2005 through the award of the five-year contract (with three five-year extensions) to Trillion in February 2006. Based on the documentation provided to USAC, these discussions do not appear to be general marketing discussions, but rather show that Lake Pend provided Trillion with inside information regarding its needs and details about their procurement process, that Trillion influenced the procurement process by providing input into Lake Pend's FCC Form 470 to ensure that Trillion would be awarded the contract. Also the documentation also shows that Lake Pend had already decided to select Trillion as its service provider even prior to the completion of the competitive bidding process.

In addition to the lunch meetings and trips discussed above, starting in April and May of 2005, Kate Stetzner and Jim Bangle corresponded about the details of the current network and Internet connections from various providers, the establishing 470, and pricing. Trillion then provided a Lake Pend Design Map and Services proposal and followed up with meetings to discuss the proposal. The applicant then indicated that they would easily be able to select Trillion if the plan is right. By August, a final proposal was sent.

Subsequent to the filing of the Form 470, Trillion and Lake Pend continued to meet and discuss items related to Lake Pend's Form 470 and Trillion's proposal. On December 3, 2005, Jim Bangle sent David White an email stating, "I'll be contacting you for assistance with the 470 not this week but next." David White responded and said, "We need to get the 470 in ASAP – the 471 window opened today!" On December 12, 2005, Jim Bangle sent Alan Larsen an email noting that he was trying to get Trillion online and explained that "[Trillion] flew Doug and I out to Colorado Springs and let us visit two school district who are using. We talked and worked with the districts' tech guys and got honest assessments of what's up and how it all works. They gave rave reviews like you wouldn't believe." On December 14, 2005, David White sent Jim Bangle an email scheduling a meeting on December 20, 2005 and stating, "if you need help with your form 470 you can contact www.erateconsulting.com and let them know that trillion referred you. They will take care of the entire process if you wish." Also on December 14, 2005, Jim Bangle confirmed that he was working with ERC to complete the Form 470 and that he now needed "someone to help him tweak it." On Jim Bangle's December 17, 2005 To Do List, he noted "erate: 470 for Trillion!!!" On Jim Bangle's December 20, 2005 To Do List, he noted "erate: 471 for Trillion!!!" On December 21, 2005, Jim Bangle sent David White an email stating "Good news: Lisa thought the cost "was totally reasonable and justified . . . Your network as described so far is only for my WAN. It does NOT currently

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.

- You did not reference in your response or in the attached exhibits any of the meals that Trillion provided to Lake Pend employees from May 2005 through January 2006. However, Trillion provided documentation for some of these meals, please explain the discrepancy in your response.
- You have indicated in your response, “[Lake Pend] did not use or hire an e-rate consultant. Trillion Partners provided technical guidance to our IT Director, Jim Bangle.” In several of the emails noted above, Jim Bangle contacted eRate Consulting Services, LLC for help with preparing the Form 470. Please provide information about your relationship with ERC and whether ERC provided any other consulting services to the Lake Pend. Did anyone associated with eRate Consulting Services, LLC introduce you to the service provider Trillion Partners, Inc.? Did anyone associated with eRate Consulting Services, LLC select the vendor for the services requested in the FRNs listed above? Did anyone associated with eRate Consulting Services, LLC encourage you to select Trillion Partners, Inc. as your service provider? Please also explain how Lake Pend’s reliance on Trillion for guidance regarding the E-Rate program does not violate program rules that prohibit service providers from assisting applicants in preparing program forms that require the applicant’s certification, such as the Form 470.
- You indicated in your response that Sean Cronin (Lake Pend) was invited and attended Trillion’s annual VTEC conference on June 23-25, 2008, in Austin, Texas. You provided information regarding about \$90 in meals; \$20 for USB thumb drives; \$679.00 for air fare and \$17 for airport shuttle. Trillion provided documentation regarding the costs of this conference that shows: \$227.20 for hotel accommodations; \$25.00 for “cool mesh shirts” and dinner at Guero’s Taco Bar total cost was \$412.70 (\$27.51). The total cost of Mr. Cronin’s expenses for this trip was approximately \$1,060 (based on the information provided). Please explain how acceptance of this expense-paid trip by Trillion does not violate program rules and did not influence Lake Pend’s decision to select Trillion as its service provider. (Copies of the relevant receipts and documentation are attached as Lake Pend.VTEC documentation.)

You have **15 days** to respond to this request. Your response is due by the close of business June 21, 2010. Please reply via e-mail or fax. Please provide complete responses and documentation to the questions listed above. It is important that you provide complete responses to ensure the timely review of your applications. If you do not respond, or provide incomplete responses, your funding request(s) (FRNs) may be reduced or denied, or in the case of committed FRNs subjected to commitment adjustment and we will perform the denials described at the beginning of this letter.

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.

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