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October 2, 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: Request for Review and Waiver (CC Docket No. 02-6)

Re: Alamogordo Public Schools
Billed Entity Number 143365
Funding Years 2007, 2008, 2009, 2010
Form 471 Application Numbers 581531, 613214, 659321 and 735508
Funding Request Numbers 1623567, 1762179, 1841899 and 1988956

Dear Ms. Dortch:

On behalf of Byron Smyl, the court-appointed Receiver of Trillion Partners, Inc., enclosed please find a Request for Review and Waiver of decisions by the Universal Service Administrative Company denying the above-referenced E-Rate applications filed by Alamogordo Public Schools.

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

Respectfully submitted,

/s/ Henry M. Rivera

Henry M. Rivera
Counsel to Byron Smyl, Receiver, Trillion Partners, Inc.

Enclosure

cc: Trent B. Harkrader

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

In the Matter of)	Alamogordo Public Schools
)	Billed Entity Number 143365
Requests for Review of)	Funding Years 2007, 2008, 2009, 2010
Decisions of the)	Form 471 App. Nos. 581531, 613214,
Universal Service Administrator by)	659321 and 735508
)	Funding Request Nos. 1623567,
Trillion Partners, Inc.)	1762179, 1841899 and 1988956
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ATT: Telecommunications Access Policy Division
Wireline Competition Bureau

REQUEST FOR REVIEW AND WAIVER

Byron Smyl, Receiver, Trillion Partners, Inc. (hereinafter “Trillion”),¹ through counsel and pursuant to Sections 54.719(c) and 54.722(a) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,² hereby petitions the Commission’s Wireline Competition Bureau for review of adverse decisions by the Universal Service Administrative Company (“USAC”) with respect to the above-referenced funding requests by Alamogordo Public Schools (“Alamogordo”).

¹ On August 5, 2011, the Honorable Marcia S. Krieger of the United States District Court for the District of Colorado issued an Order appointing Byron Smyl as Receiver of Trillion Partners, Inc. *Tatonka Capital Corporation, Plaintiff, v. Trillion Partners, Inc.*, Civil Action No. 11-cv-01787-MSK-MJW (D.Colo. 2011). The Court’s order empowered the Receiver to “take all such actions and exercise all such discretion and authority as may be necessary or desirable in connection with the ongoing operation, maintenance, management, protection and preservation of the Receivership Assets,” including the authority to “file legal proceedings or make such claims (including in the name of Trillion) to enforce any of Trillion’s rights.”

² 47 C.F.R. §§ 54.719(c), 54.722(a).

I. INTRODUCTION

Over the past several years, USAC has unreasonably subjected virtually all E-Rate applications related to Trillion to a heightened level of scrutiny. As the record in CC Docket No. 02-6 reflects, an unusually large number of applications associated with Trillion have been previously denied for alleged violation of the competitive bidding rules. Trillion has been successful in having a very high percentage of those denials overturned by the Commission on appeal.³ While Trillion's view is that USAC's heightened level of scrutiny verges on harassment, Trillion has undertaken extraordinary measures to remain focused on its core mission of providing E-Rate services to over half a million students across the nation, many of which are located in rural and economically disadvantaged areas. Trillion strongly supports all efforts to curb fraud, waste and abuse in the E-Rate program. However, in Trillion's experience, USAC has been overzealous in its application of the FCC's rules, has disregarded the facts and significantly harmed Trillion and its applicants. USAC's recent decisions that are the subject of this Request for Review and Waiver are no exceptions.

The instant Request for Review and Waiver relates to USAC's latest effort to find fault with applications with which Trillion is associated, questioning the legitimacy of a competitive bidding process that took place in 2006-2007. Specifically, USAC alleges that a properly executed multi-year contract between Trillion and Alamogordo for Funding Year 2007 (Attached as Exhibit 1), which was signed by Alamogordo on

³ See e.g., *Dimmitt Independent School District, Dimmitt, Texas*; *East Central Board of Cooperative Educational Services, Limon, Colorado*; *Houston County Schools, Dothan, Alabama*; *Trillion Partners, Inc., Austin, Texas*, DA 11-1854, Order (rel. Nov. 4, 2011); *Canon City School District Fremont RE-1, Canon City, Colorado, et al.*, DA 12-189, Order (rel. Feb. 15, 2012); *Aberdeen School District, Aberdeen, Washington, et al.*, DA 12-248, Order (rel. Feb. 22, 2012); *Kings Canyon Unified School District, Reedley, CA, et al.*, DA 12-604, Order (rel. Apr. 17, 2012); *Trillion Partners, Inc., Austin, Texas*, DA 12-605, Order (rel. Apr. 17, 2012).

February 4, 2007 and by Trillion on February 5, 2007 does not exist. Specifically, USAC alleges that the parties did not have a valid contract in place at the time the FCC Form 471 was filed on February 7, 2007 in violation of the Commission's competitive bidding rules. The crux of USAC's argument is that no contract exists because, over three years ago, and in response to a USAC "Special Compliance Review," Alamogordo provided USAC with copy of a Trillion proposal bearing the date of February 7, 2007. USAC's unwarranted conclusion about the existence of this proposal is that because the proposal post-dates the executed contract by three days, there was no contract in place at the time the FCC Form 471 was filed. The implication of USAC's allegation is clear and one that Trillion takes very seriously – at its core, USAC is claiming that Trillion and Alamogordo back-dated a contract in order to comply with the FCC's requirement that a contract exist before the Form 471 is filed. Because USAC cannot and has not produced any evidence to support this most serious allegation, USAC has shifted the burden of proof to the applicant, stating that it is the applicant's burden to demonstrate that USAC's conclusion is incorrect and that the applicant in this case has failed to meet that burden. USAC goes further, arguing that because the applicant has not met its burden of proof with respect to the existence of a contract for Funding Year 2007, the parties did not have legally binding contracts for Funding Years 2008, 2009 and 2010.

As demonstrated below, USAC is simply wrong. In fact, the parties had a legally binding contract at the time the FCC Form 471 was filed for Funding Year 2007 and, likewise, the parties had a legally binding contract at the time the applications for Funding Years 2008, 2009 and 2010 were filed. Thus, the Commission should reverse USAC's findings and reinstate the applications for further processing.

II. FACTS AND CHRONOLOGY

On December 12, 2006, Alamogordo filed an FCC Form 470 for Funding Year 2007 (FCC Form 470 Number 734290000605969). After the requisite 28-day period, Alamogordo selected Trillion as its service provider. On February 4, 2007, Alamogordo's Superintendent signed a multi-year contract with Trillion and, the next day, February 5, 2007, a Trillion representative signed the contract.⁴ On February 7, 2007, Alamogordo filed FCC Form 471 with USAC (FCC Form 471 Number 581531). USAC did not challenge the validity of the Form 471 application for Funding Year 2007, and, at the appropriate time, Alamogordo subsequently filed applications for Funding Years 2008, 2009 and 2010. The contract was subsequently amended twice — once on December 18, 2007 and once on January 11, 2008.⁵

On or about November 2010 – more than three and a half years after Alamogordo filed its FCC Form 471 for Funding Year 2007 – USAC denied Alamogordo's applications for Funding Years 2009 and 2010 for the following reason: "*Program rules require an applicant has a signed and dated contract at the time the Form 471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007, therefore this FRN is denied.*" On December 10, 2010, Alamogordo filed with USAC an appeal of this decision.⁶

⁴ Contract between Trillion Partners, Inc. and Alamogordo Public Schools (Attached as Exhibit 1).

⁵ Contract Amendments (Attached as Exhibit 2).

⁶ Alamogordo Appeal of Funding Commission Decision Letters for Funding Years 2009 and 2010, filed with USAC on December 10, 2010 (Attached as Exhibit 3).

On February 15, 2011, USAC issued a COMAD rescinding funding for Alamogordo's application for Funding Year 2008.⁷ The reason stated by USAC for this rescission is identical to the reason given for the denial of the applications for Funding Years 2009 and 2010. On March 3, 2011, Alamogordo filed with USAC an appeal of this decision.⁸ On August 3, 2012 – twenty (20) months after Alamogordo filed its appeal of the denial of its applications for Funding Years 2009 and 2010 – USAC issued two Administrators Decisions on Appeal denying the appeals filed by Alamogordo for Funding Years 2009 and 2010.⁹ The Administrators Decisions on Appeal state:

USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which meets your state and local or the FCC's definition of a contract. Additionally, the services you requested are not tariff or month-to-month services. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." See 47 C.F.R. sec. 54.504(c). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.¹⁰

On September 6, 2012, sixty-seven (67) months after the filing for the FCC Form 471 for Funding Year 2007, USAC issued a COMAD rescinding committed funds for

⁷ Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to George McDonald, Alamogordo Public School District (dated February 15, 2011) (regarding Funding Year 2008, FCC Form 471 Application Number 613214, FRN 1762179) (Attached as Exhibit 4).

⁸ Alamogordo Appeal of Funding Commission Decision Letter for Funding Year 2008, filed with USAC on March 3, 2011 (Attached as Exhibit 5).

⁹ Administrator's Decision on Appeal – Funding Year 2009-2010 (dated August 3, 2012) (regarding Form 471 Application Number 659321, FRN 1841899) (Attached as Exhibit 6); Administrator's Decision on Appeal – Funding Year 2010-2011 (dated August 3, 2012) (regarding Form 471 Application Number 735508, FRN 1988956) (Attached as Exhibit 7).

¹⁰ Administrator's Decision on Appeal – Funding Year 2009-2010, at 3 (dated August 3, 2012); Administrator's Decision on Appeal – Funding Year 2010-2011, at 3 (dated August 3, 2012).

Alamogordo's application for Funding Year 2007.¹¹ On September 7, 2012, USAC issued a Demand Payment Letter seeking repayment of \$76,415.27 in disbursed funds for Funding Year 2008.¹² The COMAD and the Demand Payment Letter indicate:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. You indicated that you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007. FCC rules require an applicant have a signed and dated contract at the time of the Form 471 certification is filed. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.¹³

In the instant pleading, Trillion seeks review of USAC's denials, COMADs and Demand Payment Letter for Funding Years 2007, 2008, 2009 and 2010.¹⁴ As demonstrated below, USAC erred in concluding no valid contract existed between Alamogordo and Trillion in violation of the Commission's competitive bidding procedures.

III. USAC ERRED WHEN IT SUMMARILY DISMISSED THE UNDISPUTED FACT THAT THE PARTIES ENTERED INTO A LEGALLY-BINDING CONTRACT – WHICH COMPLIED WITH STATE LAW - PRIOR TO THE FILING OF THE FCC FORM 471 FOR FUNDING YEAR 2007.

¹¹ Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to Tony Korwin, Alamogordo Public School District (dated September 6, 2012) (regarding Funding Year 2007, FCC Form 471 Application Number 581531, FRN 1623567) (Attached as Exhibit 8).

¹² Demand Payment Letter, Schools and Libraries Division, to Andy Eisley, Alamogordo Public School District (dated September 7, 2012) (regarding Funding Year 2008, FCC Form 471 Application Number 613214, FRN 1762179) (Attached as Exhibit 9).

¹³ See Exhibits 8 and 9.

¹⁴ Alamogordo is also filing a Request for Review with the Commission.

Applicant is located in the state of New Mexico. Pursuant to New Mexico law, the contract signed on February 4, 2007 by Alamogordo and on February 5, 2007 by Trillion was clearly a “contract” on February 5, 2007, enforceable according to its terms in the courts of New Mexico. New Mexico statutes define a contract as “any agreement for the procurement of items of tangible personal property, services or construction.”¹⁵ USAC is in possession of a written and legally binding agreement to procure services that is signed by both parties and signed by people who had authority to sign on behalf of their respective organizations, before February 8, 2007. The parties themselves have conducted their relationship consistent with the terms of the agreement. USAC has provided no evidence (nor can USAC provide any) that the contract fails to comply with requirements for a contract pursuant to New Mexico law or that the parties somehow conspired to back-date the contract. Furthermore, USAC has made no allegation (and has provided no evidence) that Alamogordo failed to comply with New Mexico procurement laws and regulations, which would render the existing contract invalid.

USAC’s only argument that a contract did not exist is that Alamogordo provided a response to a “Special Compliance Review” that included a copy of a Trillion “proposal” bearing the date of February 7, 2007. There are many problems with this argument.

First, neither Trillion nor Alamogordo knows the exact date when this proposal was sent to, or received by, Alamogordo. Thus, it is incredible that USAC would presume that it knows the exact date when the proposal was sent and received, much less that it was sent on February 7. USAC has produced no evidence of this. The passage of

¹⁵ N.M. Stat. Ann. § 13-1-41 (2012).

time has served to remove any memory at Trillion and Alamogordo of when the proposal was sent and received. Simply because a document bears a specific date does not mean that the document was sent and/or received on that date.

Second, the proposal could have been the subject of a clerical error -- provided to Alamogordo well before February 7 and simply bears the incorrect date.

Third, Trillion personnel could have sent the document to Alamogordo on February 7 or at some other date pursuant to a request from the applicant for an additional copy.

The point is that it is impossible to tell why the proposal bears a February 7 date or when it was actually sent and received. The fact that it takes USAC years to request documents and years to make funding decisions makes it extremely difficult for applicants and service providers to recall the specific facts surrounding a particular document. With the passage of time, an applicant's personnel who are responsible for E-Rate matters change jobs or are reassigned to different functions and the collective institutional memory of how a particular document was handled, when it was handled, and by whom it was handled simply fades.

What can be stated with certainty because it not subject to any individual's memory or Trillion's institutional memory but, rather, because it is subject to Trillion's institutional protocol and procedure is that Trillion would not have signed a contract with a school district unless a proposal had been previously submitted and such proposal had been accepted. Only upon such acceptance and expiration of the requisite 28-day waiting period would Trillion have executed a legally binding contract. Trillion would not have any motivation to proceed otherwise nor does USAC suggest that Trillion would.

USAC also argues that another indication that no contract existed is that “*email correspondence communications illustrates that negotiations, to an extent, were not finalized and still on-going after the Contract Award Date (CAD) of February 4, 2007, which is a violation of the program’s competitive bidding process.*”¹⁶ Again, USAC is wrong. Moreover, USAC has no basis to conclude that the negotiations it thinks were going on pertained to finalizing the contract. Communication between the parties after the contract was executed could have been for various reasons. For example, New Mexico law requires Alamogordo to “...maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity” and, in doing so, make reasonable inquiries to bidders.¹⁷ New Mexico law, in turn, requires Trillion to promptly respond to such inquiries.¹⁸ What USAC has interpreted as “negotiations” could have been the communication between the parties required by New Mexico law described above.

Another explanation for this communication is that, by its express terms, the contract at issue can be modified by the parties at any time. As section 4.6 of the contract states: “Any amendment hereto shall be in writing signed by both parties following good faith negotiations.” New Mexico law also authorizes future negotiations under its definition of “contract modification,” defining it as “any written alteration in the

¹⁶ Exhibit 6 at pp. 2-3; Exhibit 7 at p. 3. *See also* Exhibit 8 at p. 4 (stating that, “...additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007”); Exhibit 9 at p. 3 (stating that, “...additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007”).

¹⁷ N.M. Stat. Ann. § 13-1-29(c) (2012).

¹⁸ N.M. Stat. Ann. § 13-1-133 (2012) (stating that: “The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility is grounds for a determination that the bidder or offeror is not a responsible bidder or offeror.”).

provisions of a contract accomplished by mutual action of the parties to the contract.”¹⁹

The point is that what USAC is characterizing as “negotiations” over the terms of the original contract might just as well have been negotiations regarding amendments to that contract. Recall that the contract was amended twice after its execution.

USAC asserts that, “*Both the proposal dated 2/7/07 and the agreement signed 2/4/07 request 466 ports for VOIP, however, the Item 21 for the FY2007 application 581531 request 500 ports. This further supports that the actual contract requests were not finalized until after the signed agreement date.*”²⁰ This absurd conclusion hardly qualifies as evidence that the parties did not have a contract in place prior to the filing of the FCC Form 471. Trillion does not know why Alamogordo’s former technology director included more ports in Item 21 of FCC Form 471 than what is indicated in the contract nor does the technology director recall why he did this. It is possible that the technology director anticipated adding additional ports during the funding year, which is not a violation of the E-Rate program rules and was allowable under the contract. For USAC to conclude that the request of 34 more ports in the FCC Form 471 is irrefutable evidence that “*the actual contract requests were not finalized until after the signed agreement date*” second guesses the intent of the parties to be bound by the terms of the contract signed on February 4, 2007 by Alamogordo and on February 5, 2007 by Trillion. USAC’s conclusion also ignores the critical fact that the parties at all times acted in accordance with the terms of the contract and fulfilled their respective obligations and responsibilities under the contract that USAC claims is non-existent. Evidence of this fact can be found in attached Exhibit 10, which is copy of Trillion’s invoice for Funding

¹⁹ N.M. Stat. Ann. § 13-1-42 (2012).

²⁰ Exhibit 6 at p. 3; Exhibit 7 at p. 3.

Year 2007. This demonstrates that Trillion billed Alamogordo for the exact same amount specified in the contract.²¹

Finally, even if there is some basis for USAC to conclude that no contract existed as of the time the FCC Form 471 was filed for Funding Year 2007 (which goes against the preponderance of the evidence in the record), a decision that no contract existed for Funding Years 2008, 2009 and 2010 cannot be supported. According to USAC's erroneous thinking, parties could never "fix" a contract: once flawed, always flawed, and the *intent* of the parties to be contractually bound and their *conduct* consistent with the rights and obligations imposed by the contract are irrelevant. This view is simply inconsistent with basic principles and jurisprudence of contract law. The parties in this case certainly conducted themselves as if they had a contract and even amended the contract twice. It defies logic that they would have done so had no contract existed nor does USAC offer any explanation as to what might cause the parties to act as if they had a contract, if none existed.

IV. IN THE UNLIKELY EVENT THE COMMISSION FINDS THERE WAS NO VALID CONTRACT AT THE TIME THE FORM 471 WAS FILED, TRILLION RESPECTFULLY REQUESTS A LIMITED WAIVER OF SECTION 54.504(a) OF THE RULES.

If the Commission were to find that Trillion and Alamogordo did not have a valid contract in place at the time the FCC Form 471 was filed on February 7, 2007, Trillion respectfully asks for a waiver of section 54.504(a) of the Commission's rules. Section 54.504(c) provides that, "An eligible school, library, or consortium that includes an

²¹ The contract and proposal indicate a monthly charge of \$8,490.58 for 466 ports of VOIP Service. The invoice shows a charge of \$69,020.20 for service from October 28, 2007 through June 30, 2008, which is the prorated amount indicated in the contract (\$8,490.58 for eight months (November through June) and 4/31 of \$8,490.58 for the partial month of service in October is equal to \$69,020.20.

eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator.”²² Notwithstanding the foregoing, the Commission has deemed it in the public interest to grant a limited waiver of this requirement. For instance, in the *Adams County Order*, the Commission granted requests by 72 schools and libraries for review of decisions by USAC denying applications on the grounds that they violated the Commission’s requirement that a legally binding agreement be in place when the FCC Form 471 application is submitted.²³ In that case, some petitioners missed the program deadline for having a written contract in place but they were adhering to local or state procurement laws; others were required to have their agreements with service providers approved by their governing boards; others had agreements that were contingent upon getting USAC’s approval of funding before they could legally enter into the contract; and others were denied simply because of ministerial mistakes.²⁴ In all instances, the Commission found that these issues did not warrant the rejection of the applications because: (a) the appeals did not involve a misuse of funds; and (b) under the circumstances at issue, rigid adherence to procedural rules and requirements did not promote the goal of ensuring access to discounted telecommunications and information services to schools and libraries and, therefore, did not serve the public interest.²⁵ The

²² 47 C.F.R. § 54.504(a).

²³ *Adams County School District 14, Commerce City, Colorado, et al.*, FCC 07-35, Order, 22 FCC Rcd 6019 (rel. Mar. 28, 2007) (“*Adams County Order*”).

²⁴ *Adams County Order*, 22 FCC Rcd at 6022-23 ¶ 9.

²⁵ *Id.*, at 6023-24 ¶ 10.

Adams County Order is consistent with several other Commission decisions on this same issue.²⁶

As stated above, the contract with Alamogordo complied with all requirements of New Mexico law and USAC fails to point to any evidence suggesting the contrary. Furthermore, there is no evidence in the record that Trillion or Alamogordo engaged in activity to defraud or abuse the E-rate program. USAC alleges no misuse of funds. As previously noted, the allegation that the parties back-dated the contract in order to meet the FCC Form 471 deadline is unsupported by the evidence. All funds actually received from USAC were used properly and for appropriate purposes. In addition, Trillion advanced the funds yet to be received from USAC, which means that if the unfunded applications are denied, Trillion's only alternatives are to pursue Alamogordo for the advanced funds or to do nothing and lose a significant amount of money.

Finally, denial of this Request for Review and Waiver is not in the public interest and would create undue hardship on Alamogordo and Trillion. Therefore, in the event the Commission were to find that Trillion and Alamogordo did not have a valid contract in place at the time the FCC Form 471 was filed on February 7, 2007, Trillion respectfully requests for a waiver of section 54.504(a) of the Commission's rules.

V. CONCLUSION

For the reasons set forth above, Trillion respectfully requests grant of the instant Petition for Review and Waiver with respect to Alamogordo's E-Rate applications for Funding Years 2007, 2008, 2009 and 2010, that USAC discontinue its recovery actions

²⁶ *Al Noor High School*, Order, 27 FCC Rcd 8223 (TAPD 2012) (waiving section 54.505(c) of the Commission's rules for 13 petitioners); *Animas School District 6*, Order, 26 FCC Rcd 16903 (TAPD 2011) (waiving section 54.505(c) of the Commission's rules for 40 petitioners); *Barberton City School District*, Order, 23 FCC Rcd 15526 (TAPD 2008) (waiving section 54.505(c) of the Commission's rules for seven petitioners).

against Alamogordo, and that the applications be remanded to USAC for further processing.

Respectfully submitted,

**BYRON SMYL, RECEIVER,
TRILLION PARTNERS, INC.**

By: /s/ Henry M. Rivera

Henry M. Rivera
Edgar Class
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
Tel: (202) 719-7000

Its Attorneys

Dated: October 2, 2012

CERTIFICATE OF SERVICE

I, Edgar Class, certify on October 2, 2012, a copy of the foregoing Request for Review and Waiver has been served via electronic mail or first class mail, postage prepaid, to the following:

Trent B. Harkrader
Chief, Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
Trent.Harkrader@fcc.gov

Letter of Appeal
Schools and Libraries - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685
Appeals@sl.universalservice.org

/s/ Edgar Class
Edgar Class

Exhibit 1

**Contract between Trillion Partners, Inc. and Alamogordo Public
Schools, Funding Year 2007**

TRILLION PARTNERS, INC.
SERVICES AGREEMENT



This Services Agreement ("Agreement") is made by Trillion Partners, Inc. ("Trillion") and Customer effective on the Effective Date indicated below. In consideration of the mutual promises and covenants contained herein the receipt and sufficiency of which are acknowledged, the parties represent, warrant, covenant, and agree as follows:

1. DEFINITIONS.

- 1.1 "**Commencement Date**" means the date that Service commences as indicated in writing by the Acceptance Certificate, attached hereto as Exhibit A, signed by Customer and Trillion.
- 1.2 "**Common Carrier**" means an entity designated by the Universal Service Administrative Company as an "eligible telecommunications carrier," or "eligible telecommunications provider," or "ETP."
- 1.3 "**Customer Demarcation Point**" means the physical location at which Trillion terminates its equipment and makes the Services available for use by the Customer (also known as a "Demarc").
- 1.4 "**Effective Date**" means the date this Agreement becomes a binding and enforceable agreement as indicated below and which is acknowledged as such by Trillion and Customer by placing their signature on this Agreement.
- 1.5 "**Equipment**" means all of the hardware and software used by Trillion, in its sole discretion, to enable the provision of Services to Customer and communications services to third parties.
- 1.6 "**E-Rate Program**" means the Universal Service Fund for Schools and Libraries established by the Federal Communications Commission, and administered by the Schools and Libraries Division of the Universal Service Administrative Company, or any successor funding program ("Schools and Libraries Division").
- 1.7 "**Renewal Term**" means the period of time following the initial Term. This Agreement is extended automatically for one (1) year terms (each, a "Renewal Term") until terminated pursuant to Section 7.
- 1.8 "**Term**" means the period beginning on the date of acceptance as indicated in writing on the Certificate of Acceptance and continuing for a period of one (1) year, and shall automatically renew for one (1) year Renewal Terms, unless terminated pursuant to Section 7.
- 1.9 "**Service Location(s)**" means the location(s) specified in the Description of Services at which the Trillion service is delivered to a single Customer Demarcation Point for each listed site.
- 1.10 "**Services**" means Trillion's services described in the Description of Services.
- 1.11 "**Service Outage**" means loss of service other than any outage that: a) is not reported by Customer to Trillion within (5) days of the occurrence; b) is less than (15) minutes in duration; c) is attributable to Trillion's scheduled maintenance; d) is attributed to related third party circuits (whether ordered by Trillion or Customer); e) is a result of inability to access customer premise; f) is a result of Customer's equipment or users; or g) is due to Force Majeure (see Section 8 below) or by any other cause not within the control of Trillion
- 1.12 "**Site Access**" means 24 hour a day, 365 day a year access to Customer's premise provided to Trillion in order to restore service or perform preventative maintenance.
- 1.13 "**Total Service Charge – All Sites**" means the total service charge for all sites (sometimes referred to as the "pre-discount amount") listed in the Description of Services before any discounts are applied.

2. DESCRIPTION OF SERVICES.

- 2.1 **Provision of Services; License.** Trillion will provide the Services as described in the Description of Services. Customer grants to Trillion an exclusive, non-revocable license ("*License*") to use those parcels of real property at the Service Locations that Trillion deems necessary to install, operate and maintain certain poles and antennas thereon and to place certain buildings or enclosures thereon and such other equipment as Trillion determines may be necessary or compatible with the conduct of Trillion's business. Notwithstanding any other provision of this Agreement, it is expressly understood that all rights granted to Trillion under this License are continuous, ongoing, and irrevocable after the expiration or earlier termination of this Agreement, any Amendment thereto, or the provision of the Services, for so long as Customer owns or leases such real property, but only to the extent permitted by law. Trillion is authorized to use the Equipment and real property for any activity in connection with the provision of other communications services as Trillion determines may be necessary or compatible with the conduct of Trillion's business. Trillion may make any substitutions to or modifications of the Equipment as it determines may be necessary or compatible with the conduct of Trillion's business. In addition, Customer grants to Trillion a non-exclusive right to install transmission cables and lines between the Equipment and between the Service Locations in connection with Trillion's use, maintenance, and operation of the Equipment.
- 2.2 **Installation.**
 - (a) **Installation of Equipment.** In the event any equipment (or any portion of the Equipment) is or becomes physically affixed or attached in any manner to real estate at the Service Location (including any building on such real estate), in no event will the Equipment be deemed to be affixed to or a part of such real estate. Rather, the Equipment is and will remain Trillion's personal property. At the request of Trillion, Customer will furnish a landlord or mortgage waiver with respect to the Equipment from any person claiming an interest in any personal or real property where the Equipment is located. As a common carrier, Trillion may utilize the Trillion owned equipment to serve other customers.
 - (b) **Use of Subcontractors.** Customer acknowledges that Trillion may provide the Services using subcontractors, and that Trillion reserves the right to substitute such subcontractors with others, in its own discretion, to maintain or enhance maintenance performance hereunder.

3. **CUSTOMER OBLIGATIONS.**

- 3.1 **Troubleshooting & Repair.** Trillion typically validates network access from the building interface to the Main Distribution Frame ("MDF") within the building. The Customer is responsible for the Local Area Network ("LAN") connectivity, DHCP, internal DNS, and routing.
- (a) The Customer must provide local LAN IP routing and Ethernet for the service connection.
 - (b) The Customer is responsible for service and repair of all LAN equipment and district owned fiber that is being utilized for service. (e.g., each fiber, switch, hub, bridge, etc.) that connects to the Trillion network.
- 3.2 **Access to the Services.** Customer agrees to monitor the use of the Services to prevent inappropriate use as well as unauthorized access to offensive or restricted sites, and to maintain and prevent unauthorized access to confidential information, including the confidentiality of any passwords and account information required for access to Services. Customer will promptly notify Trillion of any unauthorized or inappropriate use of the Services, including the Equipment, breach of security, or other damage, loss or theft. For the Customer Demarcation Point, Trillion will provide a single device or fiber-based interface to make the connection to the Customer's equipment. Customer is responsible for all internal LAN routing.
- 3.3 **Lawful Use.** Customer agrees: (a) that Services may be used solely by those entities listed in the Description of Services as being eligible to participate with Customer in obtaining the Services; (b) not to provide the Services to non-eligible third parties whether by lease, rental, transfer, assignment, sale, sublicense, or any other means, including commercial time-sharing, rental, or service bureau use; (c) not to use the Services for any purpose that is unlawful, not contemplated or prohibited by this Agreement; and (d) to abide by all applicable local, state, and national laws and regulations, including but not limited to those related to the environment and the E-Rate Program.
- 3.4 **Acceptance and Invoicing.** Customer agrees to promptly sign the Certificate of Acceptance when Customer and Trillion determine that Trillion has completed its work. If Customer fails or refuses to timely sign and return such acceptance form, Trillion reserves the right to send written notification of the commencement of service and an invoice for Services, and, notwithstanding Section 1.1 above, such stated date of commencement of service shall become the Commencement Date. Customer agrees to pay invoices as of the Commencement Date. Initial invoices will be sent upon execution of such acceptance form or on the date such written notice from Trillion is sent, whichever is earlier.
- 3.5 **Alterations and Improvements.**
- (a) Customer will not make any alterations, additions, or improvements to the Equipment, or remove Equipment from a Service Location without Trillion's prior written consent. If Customer commits any act or omission, or plans to commit any act or omission, which may cause material harm to Trillion's network, Customer agrees to compensate Trillion for such harm. If Trillion determines such harm requires the moving of a tower, fiber line, or other Equipment, Customer will compensate Trillion for such harm by paying to Trillion the cost of such move upon written invoice from Trillion. Customer shall not be responsible for the cost of moving such Equipment if the Equipment must be moved solely due to reasons reasonably within Trillion's control.
 - (b) Customer is responsible for locating pre-existing facilities of other providers, such as utilities and underground facilities, including the cost for such locating, in addition to those listed in the Description of Services.

4. **FEES AND PAYMENT TERMS.**

4.1 **Fee Payments.**

- (a) **Non-Recurring Charge:** Upon execution of this Agreement, Trillion will invoice Customer a Non-Recurring Charge if specified in the Description of Services.
 - (b) **Service Fee:** Customer shall pay Trillion the Monthly Total Service Charge – All Sites – Before E-Rate listed in the Description of Services for a Quarterly period as invoiced by Trillion within thirty (30) days of the receipt of an invoice for such amount each year during the Term. Customer is permitted to apply to the E-Rate Program for reimbursement for such payments using the Billed Entity Applicant Reimbursement ("BEAR") form as promulgated by the Federal Communications Commission (also known as FCC Form 772). Trillion may assist Customer as requested and reasonably appropriate with the preparation and filing of Customer's application for reimbursement for such annual payment.
- 4.2 **Change Orders:** Customer will be responsible for the cost of moving a tower, site or Equipment if Trillion determines that such move is necessitated by the actions of Customer and result in additional charges to Trillion. A Trillion Change Order Form shall be properly completed by Customer and submitted to Trillion to modify, reduce, or increase the equipment or services to be provided. Such Change Order Form shall be deemed a part of this Agreement if signed by both parties. Unless specified in the Change Order Form, this Agreement shall continue in full force and effect in all respects.
- 4.3 **Payment Terms:** All fees due under this Agreement will be paid in U.S. dollars within thirty (30) days after the date of Trillion's invoice, by a check sent to Trillion. Any overdue payments will bear a late payment fee of one and a half percent (1.5%) per month or the highest rate permitted by law, whichever is lower, from the original payable date until paid. Work performed which is outside the scope of this agreement, or is the subject of a Change Order, will be billed at Trillion's cost with a standard 20% markup.
- 4.4 **Taxes.** Customer agrees to pay taxes of any kind, including sales, use, withholding, and other similar federal, state or local taxes (collectively referred to as "Taxes"), imposed on Customer in connection with the Services provided under this Agreement. Customer further agrees to keep the Equipment free and clear of all levies, liens, taxes and encumbrances. If Customer fails to pay any such Taxes or like charges when due, Trillion reserves the right to make such payments or like charges, together with all penalties and interest which may have been added because of Customer's delinquency or default, and Customer will promptly reimburse Trillion for any amounts so paid. Applicable taxes, including sales taxes, if any, are the responsibility of the Customer.

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4.5 **Lawful Payments.** Notwithstanding any provision to the contrary contained in this Agreement, it is understood and agreed that the payments to be made in each fiscal year during the Term hereof are payable only out of current designated and lawfully appropriated funds of Customer for that fiscal year.

4.6 **Extensions and Upgrades.** The parties agree that extensions to the term of this Agreement are expressly authorized and shall not require a new bid. The parties agree that upgrades, improvements, additional sites, and enhancements to the Services are expressly authorized and any amendment hereto to effectuate such upgrades, improvements, additional sites, and enhancements shall not require a new bid as long as the amendment reasonably relates to the Services. Any amendment hereto shall be in writing signed by both parties following good faith negotiations.

5. **WARRANTY.**

5.1 **By Trillion.**

- (a) Trillion warrants that it will use commercially reasonable efforts to make the Services available to Customer in accordance with generally accepted standards in the unlicensed spectrum wireless industry. For additional information on this, please see attached Service Level Agreement. This warranty will apply solely to access to the Services, and will not apply to anything (1) caused by factors outside of Trillion's reasonable control; (2) that resulted from any action or inaction of Customer or any third party; (3) that resulted from scheduled maintenance or required repairs; or (4) that resulted from equipment, software or any item not provided by Trillion. All consequences for a breach of this warranty by Trillion are strictly limited to those defined in the attached Service Level Agreement.
- (b) **NO OTHER WARRANTY.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 5.1(a), TRILLION PROVIDES SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. TRILLION DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. TRILLION DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE, OR THAT DEFECTS IN THE OPERATION OF THE SERVICES WILL BE CORRECTED. THE PARTIES AGREE THAT ALL CONSEQUENCES FOR A BREACH OF WARRANTY BY TRILLION ARE STRICTLY LIMITED TO THOSE DESCRIBED IN THE ATTACHED SERVICE LEVEL AGREEMENT.

5.2 **By Customer.**

- (a) Customer represents, covenants and warrants that (1) Customer is a fully constituted political subdivision, agency or public corporation of the state in which it is located; (2) the execution, delivery, and performance by Customer of this Agreement have been duly authorized by all necessary action on the part of Customer; (3) this Agreement has been executed on behalf of Customer by persons who constitute duly authorized officers thereof; (4) this Agreement constitutes the legal, valid, and binding obligation of Customer enforceable in accordance with its terms; (5) Customer has complied with all public bidding, notice and hearing requirements where necessary, and by due notification presented this Agreement for approval and adoption as a valid obligation on its part; (6) Customer reasonably believes that funds can be obtained sufficient to make all payments during the Term. The officer of Customer responsible for budget preparation will do all things lawfully within his/her power to obtain, maintain and properly request and pursue funds from which the payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using his/her bona fide best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. Customer shall give Trillion immediate notice of Customer's intent to terminate this which shall be the end of the last of Customer's fiscal years for which appropriations for the payments were made; (7) Customer has obtained all services from its local exchange telephone service provider (other than Trillion) to ensure it has full access to 911 services; and (8) Customer will provide the required level of electricity to each facility provided by Trillion which requires electricity.
- (b) Customer shall not engage in any activity or construct any new structure, which may interfere mechanically, electrically, or operationally with the Equipment.
- (c) Because Trillion must obtain certain permits, licenses, or waivers to perform the Services and Customer would be the necessary applicant for such, Customer grants limited authority to Trillion to act as Customer's agent for the sole purpose of obtaining all permits and licenses, or waivers thereof, which are necessary for Trillion to perform under this Agreement. To the extent such grant of authority is invalid or inconsistent with applicable law, or to the extent Trillion is unable to obtain such permits, licenses, or waivers, Customer warrants that it has obtained or waived, or will obtain or waive in a timely manner, all permits, and licenses applicable to the Services. Customer expressly warrants that it will not directly or indirectly obstruct, hinder, or cause the delay, denial, or modification of any regulatory approval, license, or repeater site acquisition which Trillion determines is required for the Services so that the Services are, in Trillion's sole determination, incapable of being provided as agreed herein.
- (d) Customer shall promptly deliver to Trillion copies of any and all correspondence, notices, and forms received from Schools and Libraries Division that apply to Trillion's Services no later than three (3) days after Customer received such document.
- (e) Customer acknowledges that Trillion is not responsible for the satisfactory performance, or lack thereof, of any third party content filtering. Customer further acknowledges that it (and not Trillion) is responsible for establishing, implementing, and/or utilizing any and all practices and procedures, rules, and other methods necessary to prevent any (i) unauthorized use of the Equipment by any person, and (ii) any access by Customer (and its students, employees, agents and contractors) at the Service Locations or by means of the Equipment to web sites, web pages, emails, or email attachments that may be inappropriate.
- (f) Failure of Customer to meet a listed obligation in an agreed Statement of Work or adequately remove a listed condition precedent to Trillion's performance shall be considered a material breach of this Agreement and shall relieve Trillion of its

TRILLION PARTNERS, INC.
SERVICES AGREEMENT



obligations hereunder, but shall not relieve Customer of its obligation to timely pay upon invoice. Customer must provide a safe, secure, and adequately prepared area for Trillion's work, including but without limitation, staging, installation, and storage.

- (g) Customer shall promptly execute and return to Trillion all documents acceptable to Trillion including but without limitation, the following:
 - (i.) a certified Board Resolution authorizing the negotiation, execution and delivery of this Agreement;
 - (ii.) an Opinion of Customer's Counsel stating that: Customer is authorized and has power under State law to enter into this Agreement; that the authorization, approval and execution of this Agreement have been performed in accordance with all open meeting laws, public bidding and all other applicable State and Federal laws; and that the opinion may be relied upon by Trillion Partners, Inc. and its successors and assignees;
 - (iii.) a Certificate of Incumbency signed by the Clerk or Secretary of the Board certifying that the person signing this Agreement is a duly elected or appointed officer of the Customer;
 - (iv.) Prior three (3) audited financial statements.

6. LIMITATION OF LIABILITY AND REMEDY.

6.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE UNDER ANY THEORY, INCLUDING CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) FOR ANY INDIRECT, SPECIAL OR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, DAMAGES FOR LOSS OF DATA, LOSS OF USE OF COMPUTER HARDWARE, DOWNTIME, LOSS OF GOODWILL, LOSS OF BUSINESS, OR COMPUTER HARDWARE MALFUNCTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL TRILLION'S LIABILITY TO CUSTOMER UNDER ANY PROVISION OF THIS AGREEMENT EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER TO TRILLION FOR THE PARTICULAR SERVICE WHICH IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS PRECEDING THE IMPOSITION OF SUCH LIABILITY. THE PARTIES ACKNOWLEDGE THAT THE OTHER PARTS OF THIS AGREEMENT RELY UPON INCLUSION OF THIS SECTION. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages. Accordingly, the limitations listed in this Section 6.1 fully apply only to the extent permitted by law.

6.2 **Disclaimer of Actions Caused by or Under the Control of Third Parties.** Trillion does not and cannot control the flow of data to or from Customer's network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the Internet (or portions thereof). Trillion agrees to use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events. However, Trillion cannot guarantee that such events will not occur or that Trillion will be able to remedy all of them. Accordingly, Trillion disclaims any and all liability resulting from or related to such events.

6.3 **INDEMNITY.** Each party agrees to hold the other, including its officers, directors, shareholders, representatives, affiliates, employees, and assignees free and harmless from, and fully and completely indemnify each of them from and against, any obligations, costs, claims, judgments, reasonable attorneys' fees, and attachments to the extent arising out of any action of the party or failure of the party to act under this Agreement, except to the extent arising from the negligent, reckless or willful misconduct of the other or its agents as determined by a court of competent jurisdiction.

6.4 **BINDING ARBITRATION.** All controversies, disputes, or claims between the parties or any of their respective officers, directors, agents, employees and attorneys, arising from or relating to this Agreement shall on demand of either party be submitted for arbitration to the American Arbitration Association ("AAA"). The arbitration shall be governed exclusively by the United States Arbitration Act (9 U.S.C. § 1, et seq.), without reference to any state arbitration statutes. The parties agree that, in connection with any such arbitration proceeding, each shall submit or file any claim which would constitute a compulsory counterclaim (as defined by Rule 13 of the Federal Rules of Civil Procedures) within the same proceeding as the claim to which it relates. Any such claim, which is not submitted or filed in such proceeding, shall be barred. The arbitration proceedings shall be conducted in Austin, Texas and shall be conducted in accordance with the commercial arbitration rules of the AAA in effect on the date of this Agreement, except as modified by this Agreement. Three arbitrators shall be used. Each party shall have the right to select one arbitrator from a panel provided by the AAA and those two arbitrators will then select a third arbitrator, also from the AAA panel. The parties shall be entitled to limited discovery at the discretion of the arbitrators who may, but are not required to, allow depositions. The parties acknowledge that the arbitrators' subpoena power is not subject to geographic limitations. The arbitration proceedings shall be conducted on an individual basis and not on a multi-plaintiff, consolidated, or class-wide basis. The arbitrators shall have the right to award the relief, which he or she deems proper, consistent with the terms of this Agreement, including compensatory damages (with interest on unpaid amounts from date due), specific performance, injunctive relief, legal fees and costs. The award and decision of the arbitrators shall be conclusive and binding on all parties, and judgment upon the award may be entered in any court of competent jurisdiction. Any right to contest the validity or enforceability of the award shall be governed exclusively by the United States Arbitration Act. The provisions of this Section 6.4 shall continue in full force and effect subsequent to and notwithstanding expiration or termination of this Agreement.

6.5 EACH OF THE PARTIES EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL OR COURT ACTION COMMENCED BY ANY OF THE PARTIES TO ENFORCE, COLLECT, DEFEND, ENJOIN, OR THAT OTHERWISE RELATES TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS HEREIN CONTEMPLATED OR DESCRIBED. LIKEWISE, EACH PARTY WAIVES ANY RIGHT TO HAVE A JURY TRIAL IN ANY SUCH LEGAL OR COURT ACTION FOR ANY DEFENSE, CLAIM OF SET-OFF, CLAIM OF RECOVERY, COUNTERCLAIM OR THIRD PARTY ACTION ASSERTED OR RAISED IN ANY SUCH LEGAL OR COURT ACTION. ANY LEGAL OR COURT ACTION RELATING TO THIS AGREEMENT OR THE TRANSACTIONS HEREIN CONTEMPLATED OR DESCRIBED SHALL BE TRIED EXCLUSIVELY BEFORE A COURT

TRILLION PARTNERS, INC.
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WITHOUT A JURY. CUSTOMER AND TRILLION SPECIFICALLY ACKNOWLEDGE THAT THEIR EXECUTION OF THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT FOR THEIR ENTERING INTO THIS AGREEMENT.

7. TERMINATION; RENEWAL.

7.1 Termination for Cause.

- (a) By Trillion. During the term of this agreement, if Customer fails to substantially comply with the terms of this Agreement, if the assumptions and contingencies stated herein are not met as determined by Trillion, Trillion may terminate this Agreement without liability to Customer by providing Customer with ninety (90) days prior written notice that describes the reason for termination. In the event that Trillion commences to cure and diligently pursues cure, any attempted termination by Customer shall be void and of no force and effect. Trillion may provide written notice of such cure efforts.
- (b) By Customer.
 - (i.) If Trillion fails to substantially provide the Services as warranted, Customer may terminate this Agreement without liability to Trillion for any future payments by providing Trillion with ninety (90) days prior written notice that describes the breach. In the event that Trillion commences to cure and diligently pursues cure, any attempted termination by Customer shall be void and of no force and effect. Trillion may provide written notice of such cure efforts.
 - (ii.) If the E-Rate Program is terminated in its entirety, Customer may either negotiate in good faith with Trillion to extend the term of the Agreement with appropriate terms, or Trillion may, in its sole discretion, authorize Customer in writing to terminate this Agreement effective at the end of the then current fiscal year.
 - (iii.) Trillion reserves the right to report any such early termination or default to all credit or bond rating entities, and pursue all rights and remedies at law or in equity. Such termination shall not affect or reduce the term of the License described in Section 2.1 of this Agreement.

7.2 Renewal; Effects of Termination.

- (a) Renewal. The Term of this Agreement is automatically extended on a month to month basis at Trillion's adjusted month to month pricing unless either party provides written notice of termination to the other party at least one hundred eighty (180) days prior to such termination, or Customer provides written notice of an automatic renewal pursuant to a Renewal Term.
- (b) Non-Appropriation; Duty to Present to Board. Notwithstanding any other provision of this Agreement, Customer agrees that it may not terminate this Agreement to the extent any funds are proposed in the budget of the Customer for the Services, for the fiscal period in which such termination occurs, or the next succeeding fiscal period thereafter. The officer of Customer who is responsible for financial matters of Customer shall include a request for appropriations to the governing body of Customer for full payment under this Agreement each year during the Term.
- (c) Common Carrier Rights Unaffected. Upon any termination, Trillion is expressly authorized to enter upon the premises of the Service Location where the Equipment is located, and take immediate possession of and remove such electronic Equipment. Alternatively, Trillion may, in its sole discretion, opt to leave the Equipment at the Service Location so that it may continue to provide services to others. In such event, Trillion is expressly permitted to continue to install and maintain the Equipment as set forth in Section 2.1. In such instance, Customer is obligated to provide ongoing power and access to facilities and Trillion agrees to pay the reasonable pro-rata share of Customer's actual power cost plus 20% on an annual arrears basis.

8. GENERAL PROVISIONS.

- 8.1 Governing Law and Jurisdiction. This Agreement will be exclusively governed and construed in accordance with the laws of the State in which Customer's main headquarters is located. The parties also agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be brought within one (1) year after such claim or cause of action arose or be forever barred. If either party employs attorneys to enforce any rights arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the other party.
- 8.2 Use of Customer's Name. Trillion may use Customer's name as a customer, including a general description of the services provided to Customer by Trillion, in its resumes, client lists, case studies, and in other promotional information including, but not limited to, press releases, brochures, reports, letters, white papers and electronic media such as e-mail or Web pages.
- 8.3 No Agency; Assignment. Except as expressly provided in Section 5.2(c) of this Agreement, nothing in this Agreement is intended, or should be construed, to create a partnership, agency, joint venture, or employment relationship between Customer and Trillion. Each party is an independent contractor for the other party. Customer may not assign or sublicense the rights granted under this Agreement. Trillion may assign and reassign in whole or in part, its rights, title and interests, but not its obligations, under this Agreement, including the right to receive Customer's payments hereunder, to one or more assignees at any time subsequent to its execution, without the necessity of obtaining the consent of the Customer. Customer agrees to acknowledge any such assignment and to make all payments to the assignee designated in such assignment until such assignee shall advise Customer otherwise. Customer acknowledges that Trillion's assignee shall have the right to cure any Trillion default, and to otherwise provide the Services hereunder.
- 8.4 Force Majeure. A party is not liable for non-performance to the extent to which the non-performance is caused by an event that is not within the reasonable control of the affected party, including, without limitation, war, riots, civil insurrection or acts of a common enemy, fire, flood, strikes or other labor difficulty, acts of civil or military authority, including governmental laws, orders, actions, inactions or regulations, embargo, and the party gives reasonably prompt notice to the other party and makes all reasonable efforts to perform. In no event will this provision affect Customer's obligation to make timely payments for Services rendered, whether used or not, under this Agreement.

8.5 **Assumptions and Contingencies.**

- (a) Trillion is relieved of its obligation to provide the Services if certain preconditions to installation which are outside the control of Trillion do not occur. Examples of such preconditions include the issuance of all applicable permits and other regulatory approvals under terms and conditions acceptable to Trillion, and the acquisition of any necessary repeater sites from third parties under terms and conditions acceptable to Trillion. If such preconditions do not occur, Trillion will either renegotiate with the Customer or offer to terminate this Agreement with no termination penalties for either party. Additional assumptions included in this subsection 8.5 (a) may be listed in the Description of Services.
- (b) Trillion's obligation to perform under this Agreement are based and contingent on, among other things, the engineering assumptions that:
- (i.) Trillion will be able to obtain the necessary permits, repeater sites required for line of site RF transmission and ground rights necessary to provide the proposed service.
 - (ii.) Customer will provide necessary ground rights at a location suitable for both customer and Trillion that provide proper line of site and serviceability of the equipment.
 - (iii.) The Customer will provide electricity to the specified location in an amount which Trillion indicates is necessary to deliver Trillion Service
 - (iv.) Trillion will be able to acquire the licensed frequencies required for any designated licensed spectrum necessary to deliver service.
 - (v.) The Customer will be providing all internal (local area network) layer 3 routing equipment, service, and support.
 - (vi.) To the extent line of site is required between two or more given sites, there is no obstruction between the sites which occurs after this Agreement is signed but before acceptance.
- (c) **Non-Public Works Projects Only:** Because the Customer has not declared this to be a "public works project," the prices listed do not include costs associated with paying prevailing wages. This is an agreement to allow Trillion to perform necessary work to provide its services only and is not an agreement for the construction, reconstruction, erection, alteration, renovation, improvement, demolition, or repair work to any publicly owned, leased or operated plant, building, structure, ground facility, utility system, road, or other public improvement of any kind.

8.6 **Notices, Written Consents.** Except where provided otherwise, notices and written consents will be in writing and will be deemed to have been fully given and received (1) when delivered personally; (2) when sent by confirmed fax; (3) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (4) one (1) day after deposit with a commercial overnight carrier, with written verification of such receipt. Notices, written consents, and payments will be sent to the parties at the addresses set forth in the signature block below or such other address as either party may specify in writing to the other.

8.7 **Conflicting Terms; Survival.** If there is a conflict among the terms in this Agreement and any subsequent amendment, the terms of the subsequent amendment shall control. Customer's obligations under this Agreement, including without limitation the obligation to pay for Services, shall begin on the date the Customer executes an acceptance certificate applicable to the Services specified therein. The latest date of acceptance shall be the Commencement Date. The terms of any sections which by their nature are intended to extend beyond termination will survive termination of this Agreement for any reason.

8.8 **No Waiver; Severability; Section Headings.** The failure of a party to exercise or enforce any right or provision of the Agreement will not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, then such provision will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. The section headings in the Agreement and Summary section in the Description of Services are solely for the convenience of the parties and have no legal or contractual effect, except to the extent described in Section 1.8.

8.9 **Entire Agreement.** This Agreement, including the Exhibit(s), constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement does not affect, and is independent of, any previous agreement between the parties regarding the provision of services not contemplated in this Agreement. Any previous agreement between the parties shall continue in full force and effect, and shall be renewed on a month to month basis until the Commencement Date of this Agreement. No modification or waiver of any provision hereof will be effective unless made in writing and signed by both parties. Any attempted E-Rate SPIN change during the Term without the express prior written authorization of Trillion shall be void. No handwritten alterations to the printed text of this Agreement are valid, whether initialed or not. The parties acknowledge that this Agreement was entered into following good faith, arms-length negotiations. This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Faxed signatures will be relied upon as original signatures in all respects, however, Trillion requires Customer to sign and return two originals.

[Description of Services Begins on Next Page.]

DESCRIPTION OF SERVICES



E-rate Information

Service Provider: Trillion Partners, Inc.

SPIN Number:..... 143025872

E-Rate Contact Number: . (512) 334-4100

E-Rate Notes For On-Premise WAN Services

- A. Equipment belongs to Trillion and if it is physically located on a particular school site, it is only used as an integral component of the eligible Services listed herein.
- B. On-premise equipment which is used by Trillion to provide the Services listed herein is provided by Trillion and not by another service provider.
- C. Responsibility for maintaining the equipment rests solely with Trillion, not the Customer, and not with another provider.
- D. Trillion's equipment will not transfer to the Customer in the future, and as clearly indicated in this agreement, Customer does not have an option to purchase the equipment.
- E. All upfront, capital charges of Trillion's on-premise equipment are less than 67% of the total charges (recurring plus non-recurring).
- F. On-premise equipment will not be used by the Customer for any purpose other than to receive the eligible services listed herein.
- G. The Local Area Network, if any, is functional without dependence on Trillion's equipment.
- H. As indicated in this agreement, there is no contractual, technical, or other limitation that would prevent Trillion from using its network equipment in part for other customers.

DESCRIPTION OF SERVICES: Telephone Services – Trillion Centrex VoIP

Trillion Centrex VoIP Service by Site List

Alomogordo	Analog Phone Service	IP Phone Service	Voicemail Only	Extension Only	LEC Analog Trunks*	T1 / PRI Access (T1=24 ports)	911 Circuit Access (required)
District Office	0	60	0	10	2	1	1
Academy del Sol Alt	0	15	0	1	1	0	1
Alamogordo HS	0	60	0	6	2	0	1
Buena Vista ES	0	5	0	1	1	0	1
Chaparral MS	0	20	0	1	1	0	1
Heights ES	0	20	0	1	1	0	1
High Rolls Mtn ES	0	5	0	1	1	0	1
Holloman Int	0	10	0	1	1	0	1
Holloman MS	0	10	0	1	1	0	1
Holloman Primary	0	5	0	1	1	0	1
La Luz ES	0	20	0	1	1	0	1
Mountain View MS	0	50	0	1	1	0	1
North ES	0	20	0	1	1	0	1
Oregon ES	0	20	0	1	1	0	1
Sacramento ES	0	20	0	1	1	0	1
Siewrra ES	0	20	0	1	1	0	1
Yucca ES	0	6	0	1	1	0	1
Warehouse	0	6	0	1	1	0	1
Total	0	372	0	32	20	1	18
Total Voice Ports:							466

*Includes support for fax lines and additional lines requested by the customer

DESCRIPTION OF SERVICES



Service Description	
Service:	Trillion Centrex VoIP Services
	<i>Pricing for voice services is quoted on a "Per Voice Port" basis. Voice Ports may be added at any time at Pre-E-Rate \$33 per port per month, subject to Trillion approval, under a separate non E-Rate agreement. Note that customer may seek E-Rate funding for additional voice ports during the next E-Rate application cycle.</i>
Contract Term in Years	1, with four optional one-year renewals
Estimated E-Rate Discount	80%
Number of Sites	18
Total Voice Ports	466

Voice Services	Before E-Rate		After E-Rate	
	Month	Annual	Month	Annual
Installation Charge Per Voice Port	\$0.00	\$0.00	\$0.00	\$0.00
Total Service Charge - All Voice Ports	\$8,490.58	\$101,887.02	\$1,698.12	\$20,377.40
Total Service Charge per Voice Port (breakdown) <i>(Not an additional charge)</i>	\$18.22	\$218.64	\$3.64	\$43.73
Total Service Charge per Site (breakdown) <i>(Not an additional charge)</i>	\$471.70	\$5,660.39	\$94.34	\$1,132.08
Customer Payments to Trillion	\$8,490.58	\$101,887.02		

To enter into the Services Agreement for the Services referenced ON THIS PAGE, sign below.

TRILLION PARTNERS, INC.

"TRILLION"

9208 Waterford Centre Blvd., Suite 150
Austin, TX 78758

By: _____

Print Name: SCOTT SMYTH

Title: VP LEGAL & REGULATORY

Effective Date: February 5, 2007

ALAMOGORDO PUBLIC SCHOOLS

"CUSTOMER"

Address: _____

By: _____

Print Name: PHILIP KNIGHT

Title: Superintendent

Date: 2/4/2007

SERVICE LEVEL AGREEMENTS

Each Service Level Agreement Below Is Applicable To Such Services Listed In The Description of Services



Digital Transmission Service - Wide Area Network Service Level Agreement

Support Service. Trillion's goal is provide carrier class service for our customers. Support services are provided for up to four authorized technical contacts that have been given access to the Trillion NOC. Trillion provides the ability to receive and process support cases 24x7x365. Hours of operation phone and online support are from 7 a.m. to 7 p.m. Central time, with emergency outage support 24 hours a day, seven days a week. The Trillion Network Operations Center is staffed 24x7 for proactive network monitoring and WAN system management services.

Service Metrics. Trillion will respond and begin corrective action when the following service specifications drop below the identified threshold for a given site

- (1) Service Availability: Availability drops below 100%
- (2) Latency: Average Round trip Latency exceeds 30ms
- (3) Packet Loss: Average Packet loss is greater than 1%
- (4) Mbps: Throughput is 90% of the total bandwidth contracted for each site
- (5) Customer Support: Trillion's goal is to provide a NOC support contact within a two hour average response time to any customer submitted support request
- (6) On-site Service: Trillion's goal is to dispatch a field technician within one hour of service outage verification is the service cannot be restored remotely.

Scheduled Maintenance: Trillion will notify customer 48 hours in advance of any scheduled maintenance. Trillion at its sole discretion will apply necessary maintenance patches or upgrades necessary to resolve critical issues and ensure the service specifications are being met

Penalty for Service Availability Non-Compliance: For a given calendar month, within which Trillion experiences a Service Outage, Customer may request a service outage credit. In order to be eligible for the credit, Customer must log a service credit case within five (5) business days of the outage with verification by Trillion of the event. Trillion will apply a service credit based on a pro-rated calculation of the amount of time the service was unavailable to the affected site during that month.

Trillion Telephone Service - Centrex – Voice Over IP Service Level Agreement

Support Service. Trillion's goal is to provide carrier class service. Support services are provided for up to four authorized technical contacts that have been given access to the Trillion NOC. Trillion provides the ability to receive and process support cases 24x7. Hours for standard hours of operation are from 6 a.m. to 6 p.m. Central time, with emergency support 24 hours a day, seven days a week. The Trillion Network Operations Center is staffed for 24x7 network monitoring and WAN system management services.

On-site Service. Trillion provides onsite dispatch services if required to regain service. On-site dispatch is normally initiated in less than one hour after it has been determined that on-site assistance is required.

Corrective Action. Trillion will respond and begin corrective action when the following drops below the identified threshold for a given contracted WAN site. Performance of the Local LAN is not monitored nor corrected by Trillion

- (1) Centrex IP Service Availability drops below 100%
- (2) Packet loss between locations is greater than 1%

Availability Monitoring

Three monitoring cycles of no response shall constitute service unavailability and will trigger initiation of proactive outage notification procedures by Trillion. The proactive outage notification process involves notifying the Trillion NOC 24x7 for corrective action. If requested Trillion will deliver notifications to the Customer's specified point of contact via email alert and or phone call.

Product Updates. Trillion at its sole discretion will apply necessary maintenance patches or upgrades necessary to resolve critical issues. Trillion will maintain necessary backups of configuration files required to regain service in the event of equipment failure. Customer Voice mail files are the responsibility of the customer to backup to an alternate file server on premise if required.

Other Customer Obligations for Telephone Service – Centrex – Voice Over IP Service (also referred to as "Centrex IP").

Unless otherwise specified by Trillion, Trillion does not provide Ethernet switches, power, uninterruptible power supply equipment, or power over Ethernet Switches for IP phones.

Customer is required to purchase Trillion supported IP based phones to be used with the Centrex IP service.

Unless otherwise specified by Trillion, Customer is responsible for: 1) providing all analog phones and/or handsets; 2) placing all analog phones and/or IP phones and or handsets; 3) installing Personal Call Manager on Customer's computers; and 4) any connection to any Customer owned/leased legacy phone equipment. Customer may make a request that Trillion provide any of these under a Trillion Change Order Form at an additional cost.

Customers LAN must pass the Trillion network assessment that will be performed prior to service activation. If Customer declines to comply with the recommendations of a Trillion Network Assessment, Customer will be required to sign a waiver acknowledging such. The Customer shall assume all responsibility all voice quality issues. Trillions service provides Centrex IP services to a single Demarc location at a core MDF to each school and is not responsible for voice quality caused by LAN related issues.

Customers LAN equipment must be capable of prioritizing voice traffic and ensuring adequate quality of service necessary for voice operations. This includes zero packet loss, latency less than 50ms and zero jitter. Customer will be responsible for resolving LAN issues not meeting these specifications.

All Customer trouble reports, requiring an on-site visit by Trillion service employees, that are the result of Customer's own failure to maintain minimum requirements for call manager client computers, LAN, cabling, rack space, power, and ventilation will be billed at the Standard Billing Rate.

Customer is required to take all appropriate action to meet Customer's safety needs. Customer must obtain a voice grade line that includes 911 (E-911) access for each of Customer's locations from its local telephone service provider. Trillion is not responsible for providing this separate voice grade line from Customer's local telephone service provider.

Customer is required to maintain 911 (E-911) database with the local PSAP.

In the event that Trillion LEC Coordination services are not purchased by Customer, Customer is responsible for: ordering, installation, and cut-over of desired telephone company services including analog and/or digital trunks, DIDs, etc.; ensuring all telephone company services are provisioned accurately and installed on-time in accordance with the Trillion project implementation schedule; and ensuring all telephone company services are delivered, and extended if necessary, to the same physical location of Trillion's voice equipment, installed on-time in accordance with the Trillion project implementation schedule. Due to the fact that Trillion LEC Coordination services require much collaboration and shared responsibilities with the Customer, if such services are purchased by Customer, the parties' respective obligations will be determined at that time.

Trillion recommends that all IP phones be equipped with backup uninterruptible power supplies to extended survivability in the event of a power outage, this is typically done via a dedicated uninterruptible power supply for the phone or Power Over Ethernet ("POE") via Power over Ethernet patch panels or Power over Ethernet switches. It is Customer's responsibility to provide backup uninterruptible power supply power for any and all IP Phones.

Customer is required to provide all Coordinated Dialing Plan's and Call Flow. This should include all Intra and Inter and Long Distance dialing methods.

In the event that the Customer requests music on hold, it is the Customer's responsibility to install and provide a music on hold source to the system in a 8 bit 8Khz ccitt ulaw format.

Cabling toning and or documentation required for analog or IP phones is a separate service. Unless specifically requested and ordered by Customer, Trillion is not responsible for cabling any analog or IP phones.

ACCEPTANCE CERTIFICATE

Customer certifies that the Equipment and Services which are set forth in the Services Agreement dated and effective as of the ____ day of _____, 200____, by and between Customer and Trillion Partners, Inc., are accepted by Customer as of _____, 200____, which for purposes of the Services Agreement shall be the Commencement Date for the Services Agreement. Customer agrees to promptly certify the payment schedule, to be submitted by Trillion at a later date.

The School Board has conducted, or directed the signatory person below to conduct, such inspection and/or testing of the Equipment and Services as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment and Services for all purposes. School Board reaffirms their obligation to a) pay all amounts due and to become due and b) perform all other obligations under the Services Agreement, are absolute.

Trillion has provided the Services as warranted in the Services Agreement, and no event has occurred that would cause Customer to terminate the Services Agreement.

Standard Conditions of Acceptance

If Customer utilizes the Trillion Wide Area Network services at any time in any way for the provision of voice services, then the following paragraph shall apply: We understand that Trillion has requested that we obtain a voice grade line that includes 911 access for each of our locations from our local telephone service provider (which is not Trillion). We understand that Trillion is not responsible for providing this separate voice grade line from our local telephone service provider. We certify that we will take all appropriate action to meet our safety needs, and that we have the sole responsibility to obtain service from our local telephone service provider (which is not Trillion) for access to 911 services at each of our locations. For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the undersigned, Customer, its successors and assigns, agree to hold Trillion Partners, Inc., its officers, directors, shareholders, representatives, affiliates, and employees, free and harmless from, and fully and completely indemnify each of them from and against, any obligations, costs, claims, judgments, reasonable attorneys' fees, and attachments to the extent arising from or attributable to the issues raised by this paragraph.

No valid handwritten alterations have been made to the typed print of this acceptance.

_____	Trillion Partners, Inc.
"Customer"	"Trillion"
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Exhibit 2

Contract Amendments, Funding Year 2008



AMENDMENT ONE
TO SERVICES AGREEMENT
BETWEEN TRILLION PARTNERS, INC. AND ALAMOGORDO PUBLIC SCHOOLS

This is an amendment to the Services Agreement between Trillion Partners, Inc. ("Trillion") and Customer which was effective on February 5, 2007 ("Agreement"), and this Amendment is hereby agreed to by the parties and is effective on the Amendment One Effective Date indicated below by Trillion. In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

A-1. Entire Amendment. The Agreement and all Exhibits attached thereto shall remain in full force and effect except to the limited extent described in Section A-2 below. This Amendment is intended to be a minor amendment to the Services Agreement executed by Customer on the Effective Date listed below. The parties represent, warrant, and agree that this Amendment is within the scope of the original Agreement and has no effect or merely a negligible effect on price, quantity, quality, or delivery under the original contract. No modification or waiver of any provision hereof will be effective unless made in writing and signed by both parties. No valid handwritten alterations have been made to the typed print of this Amendment. This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Faxed signatures will be relied upon as original signatures in all respects.

A-2. MODIFICATIONS TO SERVICES AGREEMENT.

A-2.1 Customer to Pay After E-Rate Amount; Provide Copies of E-Rate Notices.

A-2.1.a Section 4.1(b) of the Agreement is amended to read as follows:

(b.) Service Fee: Customer shall pay Trillion the Total Annual Service Charge – All Sites – After E-Rate listed in the Description of Services on an annual basis within thirty (30) days of the receipt of an invoice for such amount each year during the Term. If the E-Rate Program funds less than the estimated amount listed in the Description of Services for any reason, Customer shall pay the difference upon invoice from Trillion. Customer must file a correctly completed Form 486 with the Schools and Libraries Division within ten (10) days after the date of issuance of a Funding Commitment Decision Letter approving at least a portion of the funding for the Services. Failure to timely file such a Form 486 shall obligate Customer to pay in full the Total Annual Service Charge – All Sites – Before E-Rate amount within ten (10) days of receipt of an invoice from Trillion.

A-2.1.b Section 5.2(d) of the Agreement is amended to read as follows:

(d.) Customer shall promptly deliver to Trillion copies of any and all correspondence, notices, and forms received from Schools and Libraries Division that apply to Trillion's Services no later than three (3) days after Customer received such document. Customer shall use its best efforts to obtain and maintain E-rate funding for the benefit of Customer throughout the Term. Should the Schools and Libraries Division decline funding for Customer for a particular E-rate year (July 1 through June 30) due to reasons attributable to Customer, Customer agrees to use best efforts to remedy such denial and correctly file for E-rate funding for the next E-rate year.

TRILLION PARTNERS, INC.

"TRILLION"

9208 Waterford Centre Blvd., Suite 150
 Austin, TX 78758

By: _____

Print Name: _____

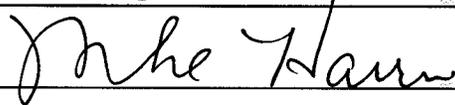
Title: _____

Effective Date: July 1, 2007

ALAMOGORDO PUBLIC SCHOOLS

"CUSTOMER"

Address: 1211 Hawaii Avenue
Alamogordo, New Mexico 88310

By: 

Print Name: Mike Harris

Title: Superintendent

Date: January 11, 2008



AMENDMENT TWO
TO SERVICES AGREEMENT EXECUTED EFFECTIVE FEBRUARY 5, 2007

This Amendment Two ("Amendment") to the Services Agreement executed by the parties effective February 6, 2007 ("Agreement") is made by Trillion Partners, Inc. ("Trillion") and Customer (also referred to as "Alamogordo Public Schools") (collectively, the "parties") effective on the Effective Date indicated below by Trillion. In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

A-1. ENTIRE AGREEMENT. The Agreement and all Exhibits attached thereto shall remain in full force and effect except to the limited extent described in Section A-2 below. This Amendment, and Amendment Two Exhibits A and B attached hereto, constitute the entire amendment with respect to the specific subject matter hereof. No modification or waiver of any provision hereof will be effective unless made in writing and signed by both parties. Any attempted E-Rate SPIN change during the Term without the express prior written authorization of Trillion shall be void. No valid handwritten alterations have been made to the typed print of this Amendment or its Exhibits. This Amendment may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Faxed signatures will be relied upon as original signatures in all respects. All signed copies of this Amendment will be deemed originals.

A-2. MODIFICATIONS.

A-2.1 Additional Services. Trillion shall provide the Additional Services described in the attached Amendment Two Exhibit A and the Additional Pricing described in the attached Amendment Two Exhibit B. The Services will be delivered only upon receipt by Trillion of a written request for service, in increments of 100 connections, from Customer, with each such request to be attached hereto and incorporated herein as they are received. The Additional Services shall be provided pursuant to all of the same terms and conditions contained in the Agreement.

A-2.2 Term for Additional Services. This Amendment is coterminous with the end of the Term and applicable Renewal Terms of the Agreement.

A-2.3 Additional Services Commencement Date. The Commencement Date for the Additional Services shall be the date that the Term of this Amendment begins which is the date indicated in writing by the standard certificate of acceptance, completed by Trillion, and signed by Customer and Trillion.

A-2.4 Amendment One Exhibits A and B. Amendment Two - Exhibits A and B are attached hereto and incorporated herein.

TRILLION PARTNERS, INC.

"TRILLION"

9208 Waterford Centre Blvd., Suite 150
Austin, TX 78768

By: [Signature]

Print Name: TERREN A. POTU
Title: PRESIDENT + CEO

Effective Date: 12/18/2007
(NOT SIGNATURE DATE)

TS
MD

ALAMOGORDO PUBLIC SCHOOLS

"CUSTOMER"

Address: 1211 HAWAII AV
ALAMOGORDO, NM 88310

By: [Signature]

Print Name: MIKE HARRIS
Title: SUPERINTENDENT

Date: 12/18/2007

AMENDMENT TWO – EXHIBIT B

Fees for Additional Services

Service Description	
Service:	Trillion VoIP Services
	<i>Additional connections may be ordered at anytime. The rates per connection may vary.</i>
Estimated E-Rate Discount	80%
Total Voice Connections	1,500

Through June 30, 2008

Voice Services	Month	Annual
Installation Charge Per Connection	\$0.00	\$0.00
Total Service Charge - All Voice Connections	\$17,730.00	\$212,760.00
Total Service Charge per Connection (breakdown) <i>(Not an additional charge)</i>	\$11.82	\$141.84
		\$212,760.00

Beginning July 1, 2008

Voice Services	Before E-Rate	
	Month	Annual
Installation Charge Per Connection	\$0.00	\$0.00
Total Service Charge - All Voice Connections	\$17,730.00	\$212,760.00
Total Service Charge per Connection (breakdown) <i>(Not an additional charge)</i>	\$11.82	\$141.84



AMENDMENT ONE TO SERVICES AGREEMENT BETWEEN TRILLION PARTNERS, INC. AND ALAMOGORDO PUBLIC SCHOOLS

This is an amendment to the Services Agreement between Trillion Partners, Inc. ("Trillion") and Customer which was effective on February 5, 2007 ("Agreement"), and this Amendment is hereby agreed to by the parties and is effective on the Amendment One Effective Date indicated below by Trillion. In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

A-1. Entire Amendment. The Agreement and all Exhibits attached thereto shall remain in full force and effect except to the limited extent described in Section A-2 below. This Amendment is intended to be a minor amendment to the Services Agreement executed by Customer on the Effective Date listed below. The parties represent, warrant, and agree that this Amendment is within the scope of the original Agreement and has no effect or merely a negligible effect on price, quantity, quality, or delivery under the original contract. No modification or waiver of any provision hereof will be effective unless made in writing and signed by both parties. No valid handwritten alterations have been made to the typed print of this Amendment. This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Faxed signatures will be relied upon as original signatures in all respects.

A-2. MODIFICATIONS TO SERVICES AGREEMENT.

A-2.1 Customer to Pay After E-Rate Amount; Provide Copies of E-Rate Notices.

A-2.1.a Section 4.1(b) of the Agreement is amended to read as follows:

(b.) Service Fee: Customer shall pay Trillion the Total Annual Service Charge - All Sites - After E-Rate listed in the Description of Services on an annual basis within thirty (30) days of the receipt of an invoice for such amount each year during the Term. If the E-Rate Program funds less than the estimated amount listed in the Description of Services for any reason, Customer shall pay the difference upon invoice from Trillion. Customer must file a correctly completed Form 486 with the Schools and Libraries Division within ten (10) days after the date of issuance of a Funding Commitment Decision Letter approving at least a portion of the funding for the Services. Failure to timely file such a Form 486 shall obligate Customer to pay in full the Total Annual Service Charge - All Sites - Before E-Rate amount within ten (10) days of receipt of an invoice from Trillion.

A-2.1.b Section 5.2(d) of the Agreement is amended to read as follows:

(d.) Customer shall promptly deliver to Trillion copies of any and all correspondence, notices, and forms received from Schools and Libraries Division that apply to Trillion's Services no later than three (3) days after Customer received such document. Customer shall use its best efforts to obtain and maintain E-rate funding for the benefit of Customer throughout the Term. Should the Schools and Libraries Division decline funding for Customer for a particular E-rate year (July 1 through June 30) due to reasons attributable to Customer, Customer agrees to use best efforts to remedy such denial and correctly file for E-rate funding for the next E-rate year.

TRILLION PARTNERS, INC. "TRILLION"

9208 Waterford Centre Blvd., Suite 150 Austin, TX 78758

By: [Signature]

Print Name: TERREN A POTU Title: PRESIDENT + CEO

S.S.

Effective Date: July 1, 2007

ALAMOGORDO PUBLIC SCHOOLS "CUSTOMER"

Address: 1211 Hawaii Avenue Alamogordo, New Mexico 88310

By: [Signature]

Print Name: Mike Harris Title: Superintendent

Date: January 11, 2008

DESCRIPTION OF SERVICES



Service Description	
Service:	Trillion Centrex VoIP Services
	<i>Pricing for voice services is quoted on a "Per Voice Port" basis. Voice Ports may be added at any time at Pre-E-Rate \$33 per port per month, subject to Trillion approval, under a separate non E-Rate agreement. Note that customer may seek E-Rate funding for additional voice ports during the next E-Rate application cycle.</i>
Contract Term In Years	1, with four optional one-year renewals
Estimated E-Rate Discount	80%
Number of Sites	18
Total Voice Ports	466

Voice Services	Before E-Rate		After E-Rate	
	Month	Annual	Month	Annual
Installation Charge Per Voice Port	\$0.00	\$0.00	\$0.00	\$0.00
Total Service Charge - All Voice Ports	\$8,490.58	\$101,887.02	\$1,698.12	\$20,377.40
Total Service Charge per Voice Port (breakdown) <i>(Not an additional charge)</i>	\$18.22	\$218.64	\$3.64	\$43.73
Total Service Charge per Site (breakdown) <i>(Not an additional charge)</i>	\$471.70	\$5,660.39	\$94.34	\$1,132.08
Customer Payments to Trillion	\$8,490.58	\$101,887.02		

To enter into the Services Agreement for the Services referenced ON THIS PAGE, sign below.

TRILLION PARTNERS, INC.

"TRILLION"

9208 Waterford Centre Blvd., Suite 150
Austin, TX 78758

By: _____

Print Name: _____

Title: _____

Effective Date: _____

Scott Smyth
SCOTT SMYTH
V.P. LEGAL & REGULATORY
February 5, 2007

ALAMOGORDO PUBLIC SCHOOLS

"CUSTOMER"

Address: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Philip Knight
PHILIP KNIGHT
Superintendent
2/4/2007

Exhibit 3

**Alamogordo Public Schools' Appeal of Funding Commission
Decision Letters for Funding Years 2009 and 2010,
filed with USAC on December 10, 2010**



Alamogordo Public Schools
1211 Hawaii Ave * PO Box 650
Alamogordo, NM 88310
(575) 812-6000

December 10, 2010

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, New Jersey 07054-0685

SUBJECT: Appeal of Funding Commitment Decision Letters
Funding Years: 2009 and 2010
Letter Dates: October 20, 2010, and October 12, 2010
Form 471#: 659321 and 735508
FRNs: 1841899 and 1988956
Billed Entity Name: ALAMOGORDO PUBLIC SCHOOL DISTRICT
BEN: 143365
Service Provider: Trillion Partners, Inc.
SPIN: 143025872

CONTACT PERSON: George McDonald, E-Rate Central
202 E. Alexandria Avenue, Alexandria, VA 22301
Phone: 703-836-2450
E-mail: gm.review@e-ratecentral.com

On behalf of Alamogordo Public Schools, I am appealing the decision in the FCDLs for 471#s 659321 and 735508 not to fund FRNs 1841899 and 1988956 based on the reason: "Program rules require an applicant has a signed and dated contract at the time the Form 471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007, therefore this FRN is denied."

The following are the responses that Alamogordo Public Schools (APS) provided to SLD's questions with respect to questions about the 2007 contract between Trillion and APS:

We have questions about the competitive bidding process for application 659321 FRNs 1841899 and application 735508 FRN 1988956.

FY 2007 Form 470 (734290000605969) was the establishing Form 470 for your FY 2009 and FY 2010 applications. Alamogordo Public Schools signed its contract for Trillion Centrex VOIP Services on February 4, 2007. During the process of our review, we observed that Trillion Partners, Inc. did not submit its Centrex VOIP and WAN proposal to Alamogordo Public Schools until February 7, 2007 for the Centrex VOIP services stated in the February 4, 2007 contract. Email documents provided by Alamogordo Public Schools and Trillion Partners discuss

that Trillion Partners was still preparing the proposal on or around February 4, 2007. See enclosed emails dated February 3 and February 5, 2007.

Alamogordo Public Schools' (APS) Response: *These events transpired in 2007 when Tony Korwin was the IT Director for Alamogordo Public Schools. He has since left the district and joined the New Mexico Public Education Department. Since current staff at APS was not able to answer these questions, we posed them to Mr. Korwin and provide his responses below.*

- Please provide an explanation regarding the contract signature date discrepancy and the date the Centrex VOIP proposal was sent to Alamogordo Public Schools for review.

Mr. Korwin: ... to be perfectly honest, I can't remember specific dates at this point, but would point back to the documents. In thinking about this, I do remember taking documents to Dr Knight for signing at his house. The other side of this is Gary Gaessler was not always the only person I dealt with at Trillion. I also dealt with a Roger Clague who is no longer there. I was never one to let grass grow under my feet if I felt I wasn't getting what I needed out of folks and was probably pressing several folks at Trillion to get me a finite proposal I could use (especially if the USAC due date was looming), and something in the back of my memory tells me that is exactly what happened. I think I got a version from someone at Trillion that we moved forward with. Gary was always a tough one to pin down for things (typical salesperson).

APS: *We would also observe that the contract that was signed on 2/4/07 had a great deal of detail including services and prices. It is the equivalent of a proposal, if not the actual proposal.*

- Please provide a description of Alamogordo Public School's contract approval process for contracts of this dollar value.

Mr. Korwin: Typically, contracts of that value required an RFP. In working with the fiscal folks at APS, it was accepted that the online posting of the 470 qualified as a RFP process. Then the applicants were evaluated for cost and service and a vendor selected. I don't remember, specifically if we had multiple applicants, but remember trying to get several different providers to apply, including the Telco out on the Mescalero reservation, who was just moving into VoIP at the time. Interestingly enough, I could NEVER get Qwest to provide ANY proposal even for their existing services in most of the years I was at Alamogordo. The contract was then signed by the Superintendent. Notification was made to the board at the next applicable board meeting as a point of information. In NM, the Superintendent is the direct arm of the school board for such matters to my understanding.

APS: *In a FY 2009 Selective Review Response in December 2009, we said the following about this procurement:*

APS issued Form 470 # 734290000605969 on 12/12/2006 with an ACD of 1/9/2007 for a Priority 1 hosted VoIP solution, among other services. It did not issue an RFP. APS received a Priority 1 VoIP solution proposal from Trillion ("Trillion Partners 2007 Proposal.pdf") and a Priority 2 solution from NACR ("NACR Alamogordo RFP Response Y10.pdf"). Since the latter was not responsive to the request, APS considered that it had only one responsive bid and signed a contract with Trillion.

- Did the Centrex VOIP contract require Alamogordo Public Schools Board approval prior to the Mr. Knight, Superintendent signing the contract? If so, when did the Board approve the contract? Please provide a copy of the Board approval (e.g., minutes, Board resolution, etc.)
- Does Alamogordo Public Schools Board have to approve contracts of this dollar magnitude before services begin?

Mr. Korwin: It was not my understanding that the board had to approve the VoIP contract. Phone services was one of those standard budget items/services that did not get a lot of scrutiny from the board. They were an accepted cost of doing business. I had developed a comparison budget/ plan and had presented it to Dr Knight as to the overall cost savings of moving away from the Qwest monopoly for the benefit of the district. I remember it was also brought up at numerous regular cabinet meetings as we progressed in order to get feedback from others in case there were any potential red flags. The cabinet included the heads of facilities, finance, HR and safety.

APS: Under New Mexico procurement regulations, the Board may delegate authority for approval of contracts to the Superintendent and that is what it had done in the case of the Trillion contract.

FY 2007 Form 470 (734290000605969) requested hosted voice over IP solution. Please explain what voice over IP services Alamogordo Public Schools was seeking from vendors.

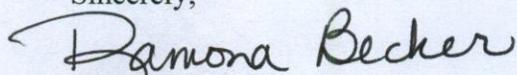
Mr. Korwin: When we were called by a potential vendor asking this question, we explained that we had put in place a robust fiber network between schools in our district and were looking to move voice services to the IP network to expand services (from about 150 Qwest supplied phone lines) and possibly reduce overall annual costs. I was looking for a VoIP solution that would utilize the network, but not impact the normal network data traffic. Our technology plan had been to move forward to put voice drops in every classroom which terminated on their own panel in service closets. Also, most of our schools and staff did not have voice mail abilities. We were also aware that implementing a plan of this magnitude, required substantial technical assistance, which we did not have; therefore we wanted an externally hosted service initially with an intent to move to a district purchased and managed system eventually. We invited prospective vendors to tour facilities to get an adequate idea of what might need to be built and provided. We initially also, requested a hosted wireless solution to remote schools at Holloman Air Force Base and at the community in La Luz, NM. Trillion initially submitted a proposal but eventually, we decided to cancel that portion of the contract due to delayed delivery promises on behalf of Trillion.

Apparently, SLD has inferred from the fact that there were communications between APS and Trillion after the February 4, 2007, signing of a contract to mean that the contract was not finalized. Mr. Korwin explained why there were communications after the signing, but that does not mean that “contract terms were not finalized and negotiations continued after February 4, 2007,”

The simple fact is that, as of February 4, 2007, the parties had a binding contract¹ that has guided their relationship since that date. There was no subsequent basic contract signed as a result of those later communications. Therefore the denial reason is incorrect. We ask that SLD reverse the determination in the FCDLs and approve funding for these two FRNs.

Thank you for your attention to this appeal.

Sincerely,



Ramona Becker
Coordinator, Technology Support Services
Alamogordo Public Schools
Phone: (575) 812-6032
E-mail: RBecker@aps4kids.org

¹ Under New Mexico state law, the contract signed on February 4, 2007 by APS and February 5, 2007 by Trillion was clearly a “contract” as of February 5, 2007. The statutory definition of contract is “any agreement for the procurement of items of tangible personal property, services or construction.” (2006 New Mexico Code - Article 1 — Procurement 13-1-41.) In the case at hand, USAC is in possession of a written agreement to procure services that is signed by both parties, signed by people who had authority to sign on behalf of their respective organizations, before February 8, 2007.

Exhibit 4

Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to George McDonald, Alamogordo Public School District (dated February 15, 2011) (regarding Funding Year 2008, FCC Form 471 Application Number 613214, FRN 1762179



Notification of Commitment Adjustment Letter

Funding Year 2008: July 1, 2008 - June 30, 2009

February 15, 2011

George McDonald
ALAMOGORDO PUBLIC SCHOOL DIST
202 E. Alexandria Avenue
Alexandria, VA 22301 1808

Re: Form 471 Application Number: 613214
Funding Year: 2008
Applicant's Form Identifier: P1
Billed Entity Number: 143365
FCC Registration Number: 0011621257
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc

Service Provider Contact Person: Virginia Bryant

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

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

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received 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 email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. 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 an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a 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 us on paper, send your appeal to:

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

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 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 on 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.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Virginia Bryant
Trillion Partners, Inc

Funding Commitment Adjustment Report for
Form 471 Application Number: 613214

Funding Request Number:	1762179
Services Ordered:	TELCOMM SERVICES
SPIN:	143025872
Service Provider Name:	Trillion Partners, Inc
Contract Number:	MTM
Billing Account Number:	
Site Identifier:	143365
Original Funding Commitment:	\$80,399.43
Commitment Adjustment Amount:	\$80,399.43
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$76,415.27
Funds to be Recovered from Applicant:	\$76,415.27

This letter replaces the one dated 2/9/2011 in its entirety and the date of this letter is now the effective date for all future processes.

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. Program rules require an applicant have a signed and dated contract at the time the Form 471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Exhibit 5

**Alamogordo Public Schools' Appeal of
Funding Commission Decision Letter for Funding Year 2008,
filed with USAC on March 3, 2011**



Alamogordo Public Schools

1211 Hawaii Ave * PO Box 650

Alamogordo, NM 88310

(575) 812-6000

March 3, 2011

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, New Jersey 07054-0685

SUBJECT: Appeal of Commitment Adjustment Letter

Funding Year: 2008

Letter Date: February 15, 2011

Form 471#: 613214

FRN: 1762179

Billed Entity Name: ALAMOGORDO PUBLIC SCHOOL DISTRICT

BEN: 143365

Service Provider: Trillion Partners, Inc.

SPIN: 143025872

CONTACT PERSON: George McDonald, E-Rate Central

202 E. Alexandria Avenue, Alexandria, VA 22301

Phone: 516-801-7820

E-mail: gm.review@e-ratecentral.com

On behalf of Alamogordo Public Schools, I am appealing the Commitment Adjustment Letter for FY 2008 Form 471# 613214 to rescind funding for FRN 1762179 based on the reason: "Program rules require an applicant have a signed and dated contract at the time the Form 471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant."

Please note that we received an earlier Commitment Adjustment Letter (dated February 9, 2011) for this same FRN citing a different reason. We questioned USAC about how to interpret the

two letters, and we have been advised that the earlier letter cited the wrong reason and the February 15th letter is the correct one.

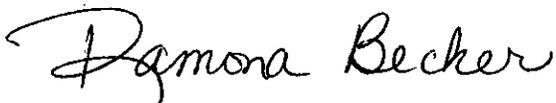
USAC denied funding for FY 2009 FRN 1841899 and FY 2010 FRN 1988956 for the same reason and we submitted an appeal of those denials on December 10, 2010. We have not yet received a response to that appeal. We ask that you take another look at December 2010 appeal as you consider this one. A copy of the December 10th appeal is attached for your convenience.

The basic point we made in the December 10th appeal is that, as of February 4, 2007, the parties had a binding contract¹ that has guided their relationship since that date. There was no subsequent basic contract signed as a result of any later communications. Therefore the denial reason is incorrect.

As we have considered this latest COMAD action, we have thought more about the FY 2009 and FY 2010 denials. We maintain that Alamogordo and Trillion had a signed contract on February 4, 2007, so funding should be committed (and not rescinded) for all of these FRNs. But, even if USAC concludes there is a valid issue with the FY 2007 commitment (which we deny), we think there is no basis to deny or rescind any later year funding commitments. Whether the contract between Alamogordo and Trillion was effective on February 4, 2007 (as we maintain), or at some later date in February 2007 (the 5th or 7th, both of which are prior to the 471 signature date of February 8th), no question has been raised over whether Alamogordo and Trillion had a valid contract when the Forms 471 for FYs 2008, 2009, and 2010 were certified. Therefore, there is no basis for denials or rescissions of those commitments. We ask that you add this argument to our appeal of the FYs 2009 and 2010 denials as you consider your decision on that appeal.

Thank you for your attention to this appeal.

Sincerely,



Ramona Becker
Coordinator, Technology Support Services
Alamogordo Public Schools
Phone: (575) 812-6032
E-mail: RBecker@aps4kids.org

¹ Under New Mexico state law, the contract signed on February 4, 2007 by APS and February 5, 2007 by Trillion was clearly a "contract" as of February 5, 2007. The statutory definition of contract is "any agreement for the procurement of items of tangible personal property, services or construction." (2006 New Mexico Code - Article 1 — Procurement 13-1-41.) In the case at hand, USAC is in possession of a written agreement to procure services that is signed by both parties, signed by people who had authority to sign on behalf of their respective organizations, before February 8, 2007.



Alamogordo Public Schools
1211 Hawaii Ave * PO Box 650
Alamogordo, NM 88310
(575) 812-6000

December 10, 2010

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
30 Lanidex Plaza West
P.O. Box 685
Parsippany, New Jersey 07054-0685

SUBJECT: Appeal of Funding Commitment Decision Letters

Funding Years: 2009 and 2010

Letter Dates: October 20, 2010, and October 12, 2010

Form 471#: 659321 and 735508

FRNs: 1841899 and 1988956

Billed Entity Name: ALAMOGORDO PUBLIC SCHOOL DISTRICT

BEN: 143365

Service Provider: Trillion Partners, Inc.

SPIN: 143025872

CONTACT PERSON: George McDonald, E-Rate Central

202 E. Alexandria Avenue, Alexandria, VA 22301

Phone: 703-836-2450

E-mail: gm.review@e-ratecentral.com

On behalf of Alamogordo Public Schools, I am appealing the decision in the FCDLs for 471#s 659321 and 735508 not to fund FRNs 1841899 and 1988956 based on the reason: "Program rules require an applicant has a signed and dated contract at the time the Form 471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007, therefore this FRN is denied."

The following are the responses that Alamogordo Public Schools (APS) provided to SLD's questions with respect to questions about the 2007 contract between Trillion and APS:

We have questions about the competitive bidding process for application 659321 FRNs 1841899 and application 735508 FRN 1988956.

FY 2007 Form 470 (734290000605969) was the establishing Form 470 for your FY 2009 and FY 2010 applications. Alamogordo Public Schools signed its contract for Trillion Centrex VOIP Services on February 4, 2007. During the process of our review, we observed that Trillion Partners, Inc. did not submit its Centrex VOIP and WAN proposal to Alamogordo Public Schools until February 7, 2007 for the Centrex VOIP services stated in the February 4, 2007 contract. Email documents provided by Alamogordo Public Schools and Trillion Partners discuss

that Trillion Partners was still preparing the proposal on or around February 4, 2007. See enclosed emails dated February 3 and February 5, 2007.

Alamogordo Public Schools' (APS) Response: *These events transpired in 2007 when Tony Korwin was the IT Director for Alamogordo Public Schools. He has since left the district and joined the New Mexico Public Education Department. Since current staff at APS was not able to answer these questions, we posed them to Mr. Korwin and provide his responses below.*

- Please provide an explanation regarding the contract signature date discrepancy and the date the Centrex VOIP proposal was sent to Alamogordo Public Schools for review.

Mr. Korwin: ... to be perfectly honest, I can't remember specific dates at this point, but would point back to the documents. In thinking about this, I do remember taking documents to Dr Knight for signing at his house. The other side of this is Gary Gaessler was not always the only person I dealt with at Trillion. I also dealt with a Roger Clague who is no longer there. I was never one to let grass grow under my feet if I felt I wasn't getting what I needed out of folks and was probably pressing several folks at Trillion to get me a finite proposal I could use (especially if the USAC due date was looming), and something in the back of my memory tells me that is exactly what happened. I think I got a version from someone at Trillion that we moved forward with. Gary was always a tough one to pin down for things (typical salesperson).

APS: *We would also observe that the contract that was signed on 2/4/07 had a great deal of detail including services and prices. It is the equivalent of a proposal, if not the actual proposal.*

- Please provide a description of Alamogordo Public School's contract approval process for contracts of this dollar value.

Mr. Korwin: Typically, contracts of that value required an RFP. In working with the fiscal folks at APS, it was accepted that the online posting of the 470 qualified as a RFP process. Then the applicants were evaluated for cost and service and a vendor selected. I don't remember, specifically if we had multiple applicants, but remember trying to get several different providers to apply, including the Telco out on the Mescalero reservation, who was just moving into VoIP at the time. Interestingly enough, I could NEVER get Qwest to provide ANY proposal even for their existing services in most of the years I was at Alamogordo. The contract was then signed by the Superintendent. Notification was made to the board at the next applicable board meeting as a point of information. In NM, the Superintendent is the direct arm of the school board for such matters to my understanding.

APS: *In a FY 2009 Selective Review Response in December 2009, we said the following about this procurement:*

APS issued Form 470 # 734290000605969 on 12/12/2006 with an ACD of 1/9/2007 for a Priority 1 hosted VoIP solution, among other services. It did not issue an RFP. APS received a Priority 1 VoIP solution proposal from Trillion ("Trillion Partners 2007 Proposal.pdf") and a Priority 2 solution from NACR ("NACR Alamogordo RFP Response Y10.pdf"). Since the latter was not responsive to the request, APS considered that it had only one responsive bid and signed a contract with Trillion.

- Did the Centrex VOIP contract require Alamogordo Public Schools Board approval prior to the Mr. Knight, Superintendent signing the contract? If so, when did the Board approve the contract? Please provide a copy of the Board approval (e.g., minutes, Board resolution, etc.)
- Does Alamogordo Public Schools Board have to approve contracts of this dollar magnitude before services begin?

Mr. Korwin: It was not my understanding that the board had to approve the VoIP contract. Phone services was one of those standard budget items/services that did not get a lot of scrutiny from the board. They were an accepted cost of doing business. I had developed a comparison budget/ plan and had presented it to Dr Knight as to the overall cost savings of moving away from the Qwest monopoly for the benefit of the district. I remember it was also brought up at numerous regular cabinet meetings as we progressed in order to get feedback from others in case there were any potential red flags. The cabinet included the heads of facilities, finance, HR and safety.

APS: Under New Mexico procurement regulations, the Board may delegate authority for approval of contracts to the Superintendent and that is what it had done in the case of the Trillion contract.

FY 2007 Form 470 (734290000605969) requested hosted voice over IP solution. Please explain what voice over IP services Alamogordo Public Schools was seeking from vendors.

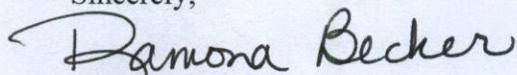
Mr. Korwin: When we were called by a potential vendor asking this question, we explained that we had put in place a robust fiber network between schools in our district and were looking to move voice services to the IP network to expand services (from about 150 Qwest supplied phone lines) and possibly reduce overall annual costs. I was looking for a VoIP solution that would utilize the network, but not impact the normal network data traffic. Our technology plan had been to move forward to put voice drops in every classroom which terminated on their own panel in service closets. Also, most of our schools and staff did not have voice mail abilities. We were also aware that implementing a plan of this magnitude, required substantial technical assistance, which we did not have; therefore we wanted an externally hosted service initially with an intent to move to a district purchased and managed system eventually. We invited prospective vendors to tour facilities to get an adequate idea of what might need to be built and provided. We initially also, requested a hosted wireless solution to remote schools at Holloman Air Force Base and at the community in La Luz, NM. Trillion initially submitted a proposal but eventually, we decided to cancel that portion of the contract due to delayed delivery promises on behalf of Trillion.

Apparently, SLD has inferred from the fact that there were communications between APS and Trillion after the February 4, 2007, signing of a contract to mean that the contract was not finalized. Mr. Korwin explained why there were communications after the signing, but that does not mean that “contract terms were not finalized and negotiations continued after February 4, 2007,”

The simple fact is that, as of February 4, 2007, the parties had a binding contract¹ that has guided their relationship since that date. There was no subsequent basic contract signed as a result of those later communications. Therefore the denial reason is incorrect. We ask that SLD reverse the determination in the FCDLs and approve funding for these two FRNs.

Thank you for your attention to this appeal.

Sincerely,



Ramona Becker
Coordinator, Technology Support Services
Alamogordo Public Schools
Phone: (575) 812-6032
E-mail: RBecker@aps4kids.org

¹ Under New Mexico state law, the contract signed on February 4, 2007 by APS and February 5, 2007 by Trillion was clearly a “contract” as of February 5, 2007. The statutory definition of contract is “any agreement for the procurement of items of tangible personal property, services or construction.” (2006 New Mexico Code - Article 1 — Procurement 13-1-41.) In the case at hand, USAC is in possession of a written agreement to procure services that is signed by both parties, signed by people who had authority to sign on behalf of their respective organizations, before February 8, 2007.

Exhibit 6

**Administrator's Decision on Appeal – Funding Year 2009-2010, dated August 3, 2012
(regarding Form 471 Application Number 659321, FRN 1841899)**



Administrator's Decision on Appeal – Funding Year 2009-2010

August 3, 2012

Andy Eisley
E-Rate Central
10238 Squire's Way
Cornelius, NC 28031

Re: Applicant Name: ALAMOGORDO PUBLIC SCHOOL DIST
Billed Entity Number: 143365
Form 471 Application Number: 659321
Funding Request Number(s): 1841899
Your Correspondence Dated: December 10, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2009 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1841899
Decision on Appeal: **Denied**
Explanation:

- USAC is in receipt of your appeal letters dated December 10, 2010 and March 3, 2011 regarding the Funding Commitment Decision Letter for FY 2009 FCC Form 471# 659321 FRN 1841899, FY 2010 FCC Form 471# 735508 FRN 1988956 and Commitment Adjustment Letter for FY 2008 FCC Form 471# 613214 FRN 1762179, between Alamogordo Public School District (Alamogordo) and Trillion Partners, Inc. (Trillion) SPIN 143025872.

In your appeal letter you indicate that it is your position that:

In your December 10, 2010 letter, you indicated that you disagreed with USAC's decision to deny FY 2009 FCC Form 471# 659321 FRN 1841899 and FY 2010 FCC Form 471# 735508 FRN 1988956 based on the following reason: "Program rules require an applicant have a signed and dated contract at the time the Form

471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007, therefore this FRN is denied."

You referenced the July 23, 2010 response from Mr. Tony Korwin, Alamogordo's Former IT Director, which included the following statement in response to the discrepancy between the contract signature date and the date of the actual submitted proposal:

Mr. Korwin: ? to be perfectly honest, I can't remember specific dates at this point, but would point back to the documents. In thinking about this, I do remember taking documents to Dr Knight for signing at his house. The other side of this is Gary Gaessler was not always the only person I dealt with at Trillion. I also dealt with a Roger Clague who is no longer there. I was never one to let grass grow under my feet if I felt I wasn't getting what I needed out of folks and was probably pressing several folks at Trillion to get me a finite proposal I could use (especially if the USAC due date was looming), and something in the back of my memory tells me that is exactly what happened. I think I got a version from someone at Trillion that we moved forward with. Gary was always a tough one to pin down for things (typical salesperson).

APS: We would also observe that the contract that was signed on 2/4/07 had a great deal of detail including services and prices. It is the equivalent of a proposal, if not the actual proposal.

Lastly, you indicated that Alamogordo had a legally binding contract in place with Trillion on February 4, 2007 and that no subsequent contract was signed despite e-mail correspondence showing on-going discussions between Tony Korwin and Gary Gaessler regarding "finalizing design and quote."

You raised these same arguments in your March 3, 2011 Letter of Appeal in response to the Commitment Adjustment Letter (CAL) rescinding the commitment of FY 2008 FCC Form 471# 613214 FRN 1762179.

However, no additional supporting documentation was provided with either appeal.

USAC disagrees with your position that a valid contract was in place at the time the FCC Form 471 was certified. This decision was made based on the following:

On June 30, 2009, Alamogordo provided a response to a Special Compliance Review that included a copy of Trillion Partner's Managed VoIP Proposal dated February 7, 2007.

Additionally, you provided the associated agreement signed by Alamogordo on February 4, 2007.

During our Special Compliance Review it was discovered that e-mail correspondence illustrates that negotiations, to an extent, were not finalized and

still on-going after the Contract Award Date (CAD) of February 4, 2007, which is a violation of the program's competitive bidding process.

The documentation clearly illustrates the agreement being signed prior to the actual proposal being submitted by Trillion. Consequently, supporting that, the actual terms of the proposal and services were not finalized at the time that the agreement was signed on February 4, 2007.

Both the proposal dated 2/7/07 and the agreement signed 2/4/07 request 466 ports for VOIP, however, the Item 21 for the FY2007 application 581531 request 500 ports. This further supports that the actual contract requests were not finalized until after the signed agreement date.

Review of the appeal letters did not provide any new information or cause to justify overturning the denial decision. The response by Mr. Korwin did not provide clarity for why the actual proposal was dated after the CAD. Therefore, in accordance with program rules, the document signed on February 4, 2007 is deemed invalid and all related funding requests will be denied and/ or rescinded in full. Upon further review, FY 2007 FCC Form 471# 581531 FRN 1623567 will be denied in addition to the appealed FRNs; FY 2008 FCC Form 471# 613214 FRN 1762179, FY 2009 FCC Form 471# 659321 FRN 1841899 and FY 2010 FCC Form 471# 735508 FRN 1988956.

In summary, USAC's decision to deny FY 2009 FCC Form 471# 659321 FRN 1841899 and FY 2010 FCC Form 471# 735508 FRN 1988956 and rescind in full the commitments of FY 2008 FCC Form 471# 613214 FRN 1762179 for the reasons cited in the Funding Commitment Decision Letter (FCDL) and Commitment Adjustment Letter (CAL), respectively, will stand. Consequently, the related appeals are also denied. Lastly, USAC will seek full recovery of disbursed funds related to FY 2007 FCC Form 471# 581531 FRN 1623567 which our records show as the initial year of the agreement signed February 4, 2007.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which meets your state and local or the FCC's definition of a contract. Additionally, the services you requested are not tariff or month-to-month services. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." *See* 47 C.F.R. sec. 54.504(c). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC.

You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. 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. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Ramona Becker
Alamogordo Public School District
1211 Hawaii Avenue
P.O. Box 650
Alamogordo, NM 88310

Exhibit 7

**Administrator's Decision on Appeal – Funding Year 2010-2011, dated August 3, 2012
(regarding Form 471 Application Number 735508, FRN 1988956)**



Administrator's Decision on Appeal – Funding Year 2010-2011

August 3, 2012

Andy Eisley
E-Rate Central
10238 Squire's Way
Cornelius, NC 28031

Re: Applicant Name: ALAMOGORDO PUBLIC SCHOOL DIST
Billed Entity Number: 143365
Form 471 Application Number: 735508
Funding Request Number(s): 1988956
Your Correspondence Dated: December 10, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2010 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1988956
Decision on Appeal: **Denied**
Explanation:

- USAC is in receipt of your appeal letters dated December 10, 2010 and March 3, 2011 regarding the Funding Commitment Decision Letter for FY 2009 FCC Form 471# 659321 FRN 1841899, FY 2010 FCC Form 471# 735508 FRN 1988956 and Commitment Adjustment Letter for FY 2008 FCC Form 471# 613214 FRN 1762179, between Alamogordo Public School District (Alamogordo) and Trillion Partners, Inc. (Trillion) SPIN 143025872.

In your appeal letter you indicate that it is your position that:

In your December 10, 2010 letter, you indicated that you disagreed with USAC's decision to deny FY 2009 FCC Form 471# 659321 FRN 1841899 and FY 2010

FCC Form 471# 735508 FRN 1988956 based on the following reason: "Program rules require an applicant have a signed and dated contract at the time the Form 471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007, therefore this FRN is denied."

You referenced the July 23, 2010 response from Mr. Tony Korwin, Alamogordo's Former IT Director, which included the following statement in response to the discrepancy between the contract signature date and the date of the actual submitted proposal:

Mr. Korwin: ? to be perfectly honest, I can't remember specific dates at this point, but would point back to the documents. In thinking about this, I do remember taking documents to Dr Knight for signing at his house. The other side of this is Gary Gaessler was not always the only person I dealt with at Trillion. I also dealt with a Roger Clague who is no longer there. I was never one to let grass grow under my feet if I felt I wasn't getting what I needed out of folks and was probably pressing several folks at Trillion to get me a finite proposal I could use (especially if the USAC due date was looming), and something in the back of my memory tells me that is exactly what happened. I think I got a version from someone at Trillion that we moved forward with. Gary was always a tough one to pin down for things (typical salesperson).

APS: We would also observe that the contract that was signed on 2/4/07 had a great deal of detail including services and prices. It is the equivalent of a proposal, if not the actual proposal.

Lastly, you indicated that Alamogordo had a legally binding contract in place with Trillion on February 4, 2007 and that no subsequent contract was signed despite e-mail correspondence showing on-going discussions between Tony Korwin and Gary Gaessler regarding "finalizing design and quote."

You raised these same arguments in your March 3, 2011 Letter of Appeal in response to the Commitment Adjustment Letter (CAL) rescinding the commitment of FY 2008 FCC Form 471# 613214 FRN 1762179.

However, no additional supporting documentation was provided with either appeal.

USAC disagrees with your position that a valid contract was in place at the time the FCC Form 471 was certified. This decision was made based on the following:

On June 30, 2009, Alamogordo provided a response to a Special Compliance Review that included a copy of Trillion Partner's Managed VoIP Proposal dated February 7, 2007.

Additionally, you provided the associated agreement signed by Alamogordo on February 4, 2007.

During our Special Compliance Review it was discovered that e-mail correspondence illustrates that negotiations, to an extent, were not finalized and still on-going after the Contract Award Date (CAD) of February 4, 2007, which is a violation of the program's competitive bidding process.

The documentation clearly illustrates the agreement being signed prior to the actual proposal being submitted by Trillion. Consequently, supporting that, the actual terms of the proposal and services were not finalized at the time that the agreement was signed on February 4, 2007.

Both the proposal dated 2/7/07 and the agreement signed 2/4/07 request 466 ports for VOIP, however, the Item 21 for the FY2007 application 581531 request 500 ports. This further supports that the actual contract requests were not finalized until after the signed agreement date.

Review of the appeal letters did not provide any new information or cause to justify overturning the denial decision. The response by Mr. Korwin did not provide clarity for why the actual proposal was dated after the CAD. Therefore, in accordance with program rules, the document signed on February 4, 2007 is deemed invalid and all related funding requests will be denied and/ or rescinded in full. Upon further review, FY 2007 FCC Form 471# 581531 FRN 1623567 will be denied in addition to the appealed FRNs; FY 2008 FCC Form 471# 613214 FRN 1762179, FY 2009 FCC Form 471# 659321 FRN 1841899 and FY 2010 FCC Form 471# 735508 FRN 1988956.

In summary, USAC's decision to deny FY 2009 FCC Form 471# 659321 FRN 1841899 and FY 2010 FCC Form 471# 735508 FRN 1988956 and rescind in full the commitments of FY 2008 FCC Form 471# 613214 FRN 1762179 for the reasons cited in the Funding Commitment Decision Letter (FCDL) and Commitment Adjustment Letter (CAL), respectively, will stand. Consequently, the related appeals are also denied. Lastly, USAC will seek full recovery of disbursed funds related to FY 2007 FCC Form 471# 581531 FRN 1623567 which our records show as the initial year of the agreement signed February 4, 2007.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which meets your state and local or the FCC's definition of a contract. Additionally, the services you requested are not non-contracted tariff or month-to-month services. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." *See* 47 C.F.R. sec. 54.504(c). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. 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. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Ramona Becker
Alamogordo Public School District
1211 Hawaii Avenue
P.O. Box 650
Alamogordo, NM 88310

Exhibit 8

**Notification of Commitment Adjustment Letter from USAC, Schools and Libraries
Division, to Tony Korwin, Alamogordo Public School District (dated September 6, 2012)
(regarding Funding Year 2007, FCC Form 471 Application Number 581531, FRN 1623567)**

Notification of Commitment Adjustment Letter

Funding Year 2007: July 1, 2007 - June 30, 2008

September 06, 2012

Tony Korwin
ALAMOGORDO PUBLIC SCHOOL DIST
1211 HAWAII AVE
ALAMOGORDO, NM 88310 0650

Re: Form 471 Application Number: 581531
Funding Year: 2007
Applicant's Form Identifier: APS07voip
Billed Entity Number: 143365
FCC Registration Number: 0011621257
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Service Provider Contact Person: Virginia Bryant

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

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

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received 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 email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. 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 an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a 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 us on paper, send your appeal to:

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

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 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 on 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.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Virginia Bryant
Trillion Partners, Inc

Funding Commitment Adjustment Report for
Form 471 Application Number: 581531

Funding Request Number:	1623567
Services Ordered:	TELCOMM SERVICES
SPIN:	143025872
Service Provider Name:	Trillion Partners, Inc
Contract Number:	na
Billing Account Number:	
Site Identifier:	143365
Original Funding Commitment:	\$83,083.20
Commitment Adjustment Amount:	\$83,083.20
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$46,626.97
Funds to be Recovered from Applicant:	\$46,626.97
Funding Commitment Adjustment Explanation:	

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During a review, it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007. FCC rules require an applicant have a signed and dated contract at the time of the Form 471 certification is filed. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.

Exhibit 9

Demand Payment Letter, Schools and Libraries Division, to Andy Eisley, Alamogordo Public School District (dated September 7, 2012) (regarding Funding Year 2008, FCC Form 471 Application Number 613214, FRN 1762179)



Demand Payment Letter

(Funding Year 2008: July 1, 2008 - June 30, 2009)

September 7, 2012

Andy Easley

ALAMOGORDO PUBLIC SCHOOL DIST

10238 Squire's Way
Cornelius, NC 28031

Re: Form 471 Application Number: 613214
Funding Year: 2008
Applicant's Form Identifier: P1
Billed Entity Number: 143365
FCC Registration Number: 0011621257
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Service Provider Contact Person: Virginia Bryant
Payment Due By: 10/7/2012

You were previously sent a Notification of Commitment Adjustment Letter informing you of the need to recover funds for the Funding Request Number(s) (FRNs) listed on the Funding Commitment Adjustment Report (Report) attached to the Notification of Commitment Adjustment Letter. A copy of that Report is attached to this letter.

The balance of this debt is due within 30 days from the date of this letter. Failure to pay the debt within 30 days from the date of this letter could result in interest, late payment fees, administrative charges, and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

If the Universal Service Administrative Company (USAC) has determined that both the applicant and the service provider are responsible for a Program rule violation, then, pursuant to the Order on Reconsideration and Fourth Report and Order (FCC 04-181), USAC will seek recovery of the improperly disbursed amount from BOTH parties and will continue to seek recovery until either or both parties have fully paid the debt. If USAC has determined that both the applicant and the service provider are responsible for a Program rule violation, this was indicated in the Funding Commitment Adjustment Explanation on the Funding Commitment Adjustment Report.

If USAC is attempting to collect all or part of the debt from both the applicant and the service provider, then you should work with your service provider to determine who will be repaying the debt to avoid duplicate payment. Please note, however, that the debt is the responsibility of both the applicant and service provider. Therefore, you are responsible for ensuring that the debt is paid in a timely manner.

Please remit payment for the full "Funds to be Recovered from Applicant" amount shown in the Report. To ensure that your payment is properly credited, please include a copy of the Report with your check. Make your check payable to the Universal Service Administrative Company (USAC).

If sending payment by U. S. Postal Service or major courier service (e.g. Airborne, Federal Express, and UPS) please send check payments to:

Bank of America
c/o Universal Service Administrative Company (105056)
1075 Loop Road
Atlanta, GA 30337
Phone 404-209-6377

If you are located in the Atlanta area and use a local messenger rather than a major courier service, please address and deliver the package to:

Universal Service Administrative Company
P.O. Box 105056
Atlanta, GA 30348-5056
Phone 404-209-6377

Local messenger service should deliver to the Lockbox Receiving Window at the above address.

Payment is due within 30 days from the date of this letter.

Complete Program information is posted to the SLD section of the USAC website at www.usac.org/sl/. You may also contact the SLD Client Service Bureau by email using the "Submit a Question" link on the SLD website, by fax at 1-888-276-8736 or by phone at 1-888-203-8100.

Universal Service Administrative Company
Schools and Libraries Division

cc: Virginia Bryant
Trillion Partners, Inc

Funding Commitment Adjustment Report
Form 471 Application Number: 613214

Funding Request Number: 1762179
Services Ordered: TELCOMM SERVICES
SPIN: 143025872
Service Provider Name: Trillion Partners, Inc
Contract Number: MTM
Billing Account Number:
Site Identifier: 143365
Original Funding Commitment: \$80,399.43
Commitment Adjustment Amount: \$80,399.43
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$76,415.27
Funds to be Recovered from Applicant: \$76,415.27
Funding Commitment Adjustment Explanation:

This letter replaces the one dated 2/9/2011 in its entirety and the date of this letter is now the effective date for all future processes.

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. Program rules require an applicant have a signed and dated contract at the time the Form 471 certification is filed. You indicated you signed a contract with Trillion on February 4, 2007. However, additional documentation provided to USAC indicated that contract terms were not finalized and negotiations continued after February 4, 2007. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING

Exhibit 10

**Trillion Partners, Inc. Invoice to
Alamogordo Public Schools for Funding Year 2007**

11000

Invoice No. 002798

For Concerns or Questions:
Trillion Partners Inc: Billing Department
Phone: (512) 334-4100
Fax: (512) 334-4099



INVOICE

Customer			
Name	APS Technical Sup. Services		
Address	PO Box 650		
City	Alamogordo	State	NM
		ZIP	88311-0650
Phone	Dee Porter 505-439-3270		

Misc	
Date	2/8/2008
FRN #	1623567
Rep	Gary Gaessler
Terms	NET 30
P.O.#	887009

Qty	Description	Unit Price	TOTAL
	Telecom Services - Voice Services		
	Annual VoIP Service from 10/28/07 - 6/30/08 for 18 School Sites: Prediscounted Less E-Rate Portion (76%)		\$ 69,020.20 (52,455.35)
	MAR 27 2008		
	FEB 19 2008		
	**A 76% E-Rate discount is utilized for the calculation above. The district's portion of the payment can slide based upon the final E-Rate percentage that the district is eligible to receive.		
	Total School District Portion		\$ 16,564.85

REMIT TO: Trillion Partners, Inc
C/O U. S. Bank Operations Center
Attn: Trust Finance Management
PO Box 86
Lockbox Services - SDS - 12-2639
Minneapolis, MN 55486-26393

OK to pay 2-12-2008
Wagon 3-31-2008

Office Use Only

APR 01 2008

Please file your form 486 as soon as possible. If you have any questions about your 486 filing, contact Jennifer Carter at 205-383-4396