

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

In the Matter of	)	Charlton County School System
	)	Billed Entity Number 127480
Requests for Review of	)	Funding Year 2011
Decisions of the	)	Form 471 Application No. 805658
Universal Service Administrator by	)	Funding Request Nos. 2203806 and
	)	2203827
Trillion Partners, Inc.	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

ATT: Telecommunications Access Policy Division  
Wireline Competition Bureau

**REQUEST FOR REVIEW**

Trillion Partners, Inc. (hereinafter “Trillion”),<sup>1</sup> through counsel and pursuant to Sections 54.719(c) and 54.722(a) of the Federal Communications Commission’s (“FCC” or “Commission”) rules,<sup>2</sup> hereby petitions the Commission’s Wireline Competition Bureau for review of adverse decisions by the Universal Service Administrative Company (“USAC”) with respect to Funding Request Nos. 2203806 and 2203827 for funding year 2011 by Charlton County School System (“Charlton”).

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<sup>1</sup> On August 27, 2012, Byron Smyl (“Receiver”), the court-appointed receiver for Trillion Partners, Inc., and TX Broadband Holding Co. (“TX Broadband”) executed an Asset Purchase Agreement whereby the Receiver agreed to sell the Trillion’s assets to TX Broadband. On November 21, 2012, the parties filed an application seeking Commission authorization for the assignment of Trillion’s wireless licenses to a wholly-owned subsidiary of TX Broadband. See ULS File No. 0005401821. The assignment application is pending before the Commission.

<sup>2</sup> 47 C.F.R. §§ 54.719(c), 54.722(a).

## I. Background

FRNs for Funding Years 2009 and 2010. On September 28, 2010, the Universal Service Administrative Company (“USAC”) issued a Funding Commitment Decision Letter (“FCDL”) denying Charlton’s E-Rate application for funding year 2010.<sup>3</sup> On September 29, 2010, USAC issued a FCDL denying Charlton’s E-Rate application for funding year 2009.<sup>4</sup> The FCDL for funding year 2010 states that the funding request was denied because Charlton “did not conduct a fair and open competitive bidding process,” “engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process,” and “Trillion was consulted and/or offered details about services and products” requested on the Form 470. The FCDL for funding year 2009 raises the same concerns as the FCDL for funding year 2010 and, in addition, states that Charlton accepted “either gifts, meals, gratuities, or entertainment from the service provider, which resulted in a competitive process that was no longer fair and open....”

On November 17, 2010, Charlton filed with the Commission an appeal of USAC’s decisions denying Charlton’s applications for funding years 2009 and 2010.<sup>5</sup> On November 19, 2010, Trillion also filed appeals of USAC’s decisions denying Charlton’s applications for funding years 2009 and 2010.<sup>6</sup> On February 23, 2012, the

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<sup>3</sup> Funding Commitment Reports from USAC, Schools and Library Division (dated Sept. 28, 2010) (regarding FY 2010, FCC Form 471 Application No. 742443, FRNs 2023430 and 2023445).

<sup>4</sup> Funding Commitment Reports from USAC, Schools and Library Division (dated Sept. 29, 2010) (regarding FY 2009, FCC Form 471 Application No. 658765, FRNs 1842340 and 1842292).

<sup>5</sup> Letter from Sandra Slater, Ed.D, Director of Technology, Charlton County School System, to Federal Communications Commission, CC Docket No. 02-6 (dated Nov. 17, 2010) (regarding FCC Form 471 Application Nos. 658765 and 742443) (“*Charlton Appeal*”).

<sup>6</sup> Letters from Trillion Partners, Inc. to the Federal Communications Commission, Telecommunications Access Policy Division, CC Docket No. 02-6 (dated Nov. 19, 2010). In addition, Trillion had previously filed with the Commission a Master Appeal addressing the denial of applications

Commission's Telecommunications Access Policy Division ("Division") issued an *Order* denying the appeals filed by Trillion and Charlton.<sup>7</sup> On March 23, 2012, Trillion and Charlton filed petitions for reconsideration of the Division's *Order*.<sup>8</sup> Those petitions for reconsideration remain pending.

FRNs for Funding Year 2011. On December 5, 2012, USAC issued two FCDLs denying Charlton's E-Rate applications with FRNs 2203806 and 2203827 for funding year 2011.<sup>9</sup> Both FCDLs state that the funding requests were denied for the following reason: "*Consistent with FCC Order DA 12-260, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that lead to this contract. Therefore, funding is denied.*"

The FRNs at issue in this appeal (FRN # 2203806 and 2203827 for funding year 2011) and the FRNs for funding years 2009 and 2010 all arise out of the same FCC Form 470 (Application Number 757500000691055) and the same competitive bidding process that the Commission is considering pursuant to the pending petitions for

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and rescission of funding commitments by USAC of many of Trillion's customers, including Charlton's. See Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 3, 2010).

<sup>7</sup> *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Charlton County School System, Folkston, Georgia, et al., File Nos. SLD-658765, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, DA 12-260, Order, 27 FCC Rcd 2010 (TAPD 2012) ("*Order*").

<sup>8</sup> Trillion Partners, Inc., Petition for Reconsideration re Charlton County School System, CC Docket No. 02-6 (filed Mar. 23, 2012) ("*Trillion Petition for Reconsideration*") (Attached as Exhibit A); Charlton County School System, Petition for Reconsideration, CC Docket No. 02-6 (filed Mar. 23, 2012) ("*Charlton Petition for Reconsideration*") (Attached as Exhibit B).

<sup>9</sup> Funding Commitment Report from USAC, Schools and Libraries Division (dated Dec. 5, 2012) (regarding Charlton County School System, FY 2011, FCC Form 471 Application No. 805658, FRN 2203806); Funding Commitment Report from USAC, Schools and Libraries Division (dated Dec. 5, 2012) (regarding Charlton County School System, FY 2011, FCC Form 471 Application No. 805658, FRN 2203827) (both FCDLs attached as Exhibit C).

reconsideration.<sup>10</sup> As demonstrated below, in denying these FRNs, USAC erred in concluding that there was a violation of the Commission’s competitive bidding rules.

## **II. Charlton Conducted a Fair and Open Competitive Bid Process.**

As noted above, the FCDLs for funding year 2011 state that the applications were denied because, “*Consistent with FCC Order DA 12-260, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that lead to this contract. Therefore, funding is denied.*” As Trillion noted in its petition for reconsideration, the *Order* does not identify or discuss the specific communications that it found to be improper and, therefore, Trillion is unable to address the concerns the Commission had about improper communications.<sup>11</sup> The *Order* merely states that, “Based on our review of the record, we find that petitioners violated the Commission’s competitive bidding requirements...”<sup>12</sup> and that such denial is “consistent with precedent.”<sup>13</sup> Other than this reference to the “record,” there is no actual discussion of the portion of the record the *Order* is relying on,

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<sup>10</sup> USAC informed Trillion that USAC would hold in abeyance actions regarding specific FRNs that are on appeal at the Commission, but that it would not hold in abeyance processing any other FRNs, even if they have the same fact patterns as those that are under reconsideration at the Commission. USAC’s treatment of the FRNs at issue in this appeal is flawed, inefficient and unreasonable. On one hand, USAC will not hold in abeyance the FRNs at issue in this appeal even though it relates to the same competitive bidding processes under reconsideration at the Commission, because these specific FRNs have not been appealed to the Commission; nevertheless, USAC is not hesitant to rely on the Division’s *Order* (DA 12-260) as the sole reason for their denial, even though this *Order* did not address the FRNs for funding year 2011. USAC’s approach will impose unnecessary additional administrative burdens on the Division and additional costs on Trillion as it is now required to file the instant appeal addressing the same set of facts and issues and the same competitive bidding process currently under review.

<sup>11</sup> Trillion submits that basic equity and Due Process requires the Commission to at least identify the specific communications that it found to be improper so that Trillion and Charlton might understand the Commission’s concerns and, if appropriate, explain and defend those communications.

<sup>12</sup> *Order*, 27 FCC Rcd at 2010-2011, ¶ 1.

<sup>13</sup> *Id.*

the arguments and evidence presented by Trillion or Charlton, or why those arguments and evidence were found unpersuasive.

Similarly, the FCDLs for funding years 2009 and 2010 did not specify the facts upon which USAC relied in its decisions to deny the applications.

Since USAC did not specify the facts upon which it relied in denying the applications for funding years 2009 and 2010 and the Division's *Order* did not specify the facts upon which it relied to deny the appeals, Trillion can only assume that USAC's and the Commission's decisions were based on allegations raised in a USAC letter to Charlton dated June 4, 2010 (hereinafter, the "*Intent to Deny Letter*") in which USAC indicated that the funding requested for funding years 2009 and 2010 would be denied because Charlton did not conduct a fair and open bidding process.<sup>14</sup> USAC's characterization of the bidding process is simply not accurate.

Dr. Slater, Charlton's Director of Technology, was solely responsible for preparing and posting Charlton's Form 470 for funding year 2009. On October 29, 2008, Dr. Slater made a *bona fide* request for services by filing with USAC an FCC Form 470, which was posted to USAC's website for all potential competing service providers to review.<sup>15</sup> After the Form 470 was posted, the school received only one bid - that of Trillion. Charlton carefully evaluated this bid, confirmed that the bid provided a cost-effective solution for the school, and waited the requisite 28-days before selecting Trillion as its vendor. The competitive bidding process that resulted in the award of a

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<sup>14</sup> See Exhibit C ("*Intent to Deny Letter*") to *Trillion Petition for Reconsideration*.

<sup>15</sup> Form 470 Application Number 757500000691055 (posted on October 29, 2008), available at: [http://www.slforms.universalservice.org/Form470Expert/PrintPreviewFY8.aspx?appl\\_id=691055&fy=2009&src=search](http://www.slforms.universalservice.org/Form470Expert/PrintPreviewFY8.aspx?appl_id=691055&fy=2009&src=search) (last visited Jan. 7, 2013).

contract to Trillion beginning in funding year 2009 was conducted in a fair and open manner and was not tainted in any way.

The *Intent to Deny Letter* references meetings and emails between Charlton and Trillion employees in October 2008, prior to the posting of the Form 470. However, the communication between Trillion and Charlton prior to the posting of the Form 470 did not violate the competitive bid rules.

As explained in both Charlton's and Trillion's appeals of the FRNs for funding years 2009 and 2010, Trillion was Charlton's incumbent service provider and much of this communication pertained to their existing contract and whether certain upgrades to the system could be implemented under the existing contract. After clarifying that the system upgrades were not provided for in the existing contract, Charlton established a competitive bidding process to obtain the needed services and equipment, all as required by the Commission's rules. The correspondence between Charlton and Trillion was entirely appropriate given their existing vendor-customer relationship. Moreover, the Commission has acknowledged that prior to the posting of the Form 470, "[a] service provider may provide information to an applicant about products or services – including demonstrations."<sup>16</sup> Charlton corresponded with Trillion as part of its investigation into what equipment and services were needed to upgrade the current system to meet the existing and future needs of Charlton students. An applicant has an obligation to "do their homework" to confirm that the equipment and services requested on the Form 470

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<sup>16</sup> *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, FCC 10-83, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, ¶ 30 (2010).

will meet the goals of the applicant's technology plan and be an efficient use of the E-rate funds.<sup>17</sup>

The *Intent to Deny Letter* does not reference any correspondence during the 28-day window; however, even if such correspondence existed, Commission's rules allow an applicant to communicate with service providers during the Form 470 window. The Commission clarified in the *Sixth Report and Order* that, "we do not prohibit communication during the 28-day waiting period."<sup>18</sup> Nor does the *Order* indicate that such communication is inappropriate, providing that "all potential bidders and service providers must have *access* to the same information and be treated in the same manner throughout the procurement process."<sup>19</sup>

### **III. The Alleged "Gifts" Did Not Violate the Commission's Rules.**

USAC's denials of the applications for funding year 2009 state that the funding requests were denied because Charlton was "offered and accepted either gifts, meals, gratuities, or entertainment from the service provider, which resulted in a competitive process that was no longer fair and open..."<sup>20</sup> As noted above, USAC's denial does not specify which gifts, meals, gratuities or entertainment were of concern to USAC.

Therefore, Trillion can only assume that USAC's decisions were based on allegations raised in the *Intent to Deny Letter*. Specifically, the *Intent to Deny Letter* questions a

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<sup>17</sup> *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al*, FCC 03-313, Order, 18 FCC Rcd 26406, 26423 (2003) ("Ysleta").

<sup>18</sup> *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, FCC 10-175, Sixth Report and Order, 25 FCC Rcd 18762, ¶ 92 (2010).

<sup>19</sup> *Order* ¶ 1, n. 1 (emphasis added), citing *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, FCC 00-167, Order, 16 FCC Rcd 4028, ¶ 10 (2000) ("Mastermind").

<sup>20</sup> Funding Commitment Reports from USAC, Schools and Library Division (dated Sept. 29, 2010) (regarding FY 2009, FCC Form 471 Application No. 658765, FRNs 1842340 and 1842292).

meal attended by a Trillion employee and Dr. Slater on October 28, 2008, and states: “Dr. Slater had several business lunches and dinners with Trillion Partner representatives prior to the competitive bidding process.”<sup>21</sup> However, those meals did not violate the Commission’s rules.

The meals were for insignificant amounts (the cost ranged from \$5.40 to \$36.44 per person) and took place over an eight-month period.<sup>22</sup> In addition, the meals were not received by employees with authority to bind Charlton to a contract or affect the competitive bidding decision. During the time period involved in the applications for funding year 2009, the only standard provided by USAC training materials regarding gifts was that applicants and service providers were to comply with state contract law and state and local procurement laws. In this case, Charlton followed all state procurement laws.<sup>23</sup> Furthermore, the meals took place in 2008 and early 2009, well before the Commission’s gift rules became effective in January 2011. Consistent with the Division’s decision in *Dimmitt*, none of these meals influenced or compromised the bidding process.<sup>24</sup>

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

As noted above, USAC cites to the Division’s *Order* as the sole basis for the denial of the FRNs for funding year 2011, but the cases cited in the *Order*, while they stand for the proposition that the bidding process must be open and competitive, do not support a denial of funding in this case.

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<sup>21</sup> Exhibit C (“Intent to Deny Letter”) to *Trillion Petition for Reconsideration*, at 1-2.

<sup>22</sup> Exhibit D (“Trillion Expense Summary”) to *Trillion Petition for Reconsideration*.

<sup>23</sup> *Charlton Appeal* at 1 (stating that “Charlton County has complied with the proper rules and regulations for the district”).

<sup>24</sup> *Requests for Review of Decisions of the Universal Service Administrator by Dimmitt Independent School District, et al.*, DA 11-1854, Order, 26 FCC Rcd 15581 (TAPD 2011).

In *Mastermind*, the Commission found violations of its competitive bidding rules when: (i) an employee of the service provider that ultimately won the bid was listed as the contact person on the applicant’s Form 470; and (ii) the applicant allowed an employee of that same service provider to prepare and distribute the request for bids to potential bidders.<sup>25</sup> Ultimately, the Commission concluded that this level of influence resulted in the applicant surrendering control of the bidding process to the service provider.<sup>26</sup> In the instant case, Trillion did not serve as the contact person for the Form 470 and Charlton retained control throughout the competitive bid process. The *Dickenson* case, like the *Mastermind* case, also addressed a situation in which the applicant’s Form 470 listed a contact person who was an employee of a service provider, which is not the case here.<sup>27</sup>

In *Approach Learning*, the Commission found a connection between the contact person listed on the Form 470 and the service provider that ultimately won the contract. In that order, the Commission noted that it believes “that the contact person exerts great influence over an applicant’s competitive bidding process by controlling the dissemination of information regarding the services requested.”<sup>28</sup> This was not the case here. Charlton’s contact person listed on the Form 470 was an employee of the school district with no connection to Trillion. Moreover, there was no evidence that Charlton’s

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<sup>25</sup> *Mastermind*, 16 FCC Rcd at 4033, ¶ 10.

<sup>26</sup> *Id.*

<sup>27</sup> *Request for Review of the Decision of the Universal Service Administrator by Dickenson County Public Schools, Clintwood, Virginia; Federal-State Joint Board on Universal Service*, DA 02-1971, Order on Reconsideration, 17 FCC Rcd 15747 (TAPD 2002).

<sup>28</sup> *Requests for Review of the Decisions of the Universal Service Administrator by Approach Learning and Assessment Center, Santa Ana, CA, et al.*, DA 07-1332, Order, 22 FCC Rcd 5296, 5303, ¶ 19 (WCB 2007).

contact person was unresponsive to requests for information from competing service providers.

**V. Conclusion**

For the reasons set forth above, Trillion respectfully requests grant of the instant Petition for Review with respect to Charlton's E-Rate applications for funding year 2011.

Respectfully submitted,

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