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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: Trillion Partners, Inc.'s Requests for Review of Decisions of the Universal Service Administrator re Falcon School District 49 (CC Docket No. 02-6)
Billed Entity Number 142299
Funding Year 2012
Form 471 App. No. 838063
Funding Request No. 2273735

Dear Ms. Dortch:

On behalf of Trillion Partners, Inc., enclosed please find a Request for Review of a decision by the Universal Service Administrative Company denying the above-referenced E-Rate application filed by Falcon School District 49.

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

Respectfully submitted,

/s/ Edgar Class

Edgar Class
Counsel to Trillion Partners, Inc.

Enclosures

cc: Trent B. Harkrader

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

In the Matter of)	Falcon School District 49
)	Billed Entity Number 142299
Requests for Review of)	Funding Year 2012
Decisions of the)	Form 471 App. No. 838063
Universal Service Administrator by)	Funding Request No. 2273735
)	
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”),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 an adverse decision by the Universal Service Administrative Company (“USAC”) with respect to Funding Request No. 2273735 for funding year 2012 by Falcon School District 49 (“District”).

¹ 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.

² 47 C.F.R. §§ 54.719(c), 54.722(a).

I. Background

FRNs for Funding Years 2005 Through 2010. On September 28, 2010, the Universal Service Administrative Company (“USAC”) issued a Funding Commitment Decision Letter (“FCDL”) denying the District’s E-Rate applications for funding year 2010.³ On September 29, 2010, USAC issued a FCDL denying the District’s E-Rate applications for funding year 2009.⁴ On October 21, 2010, USAC issued Notification of Commitment Adjustment Letters (“COMADs”) rescinding committed funds for the District’s applications for funding year 2005, 2006, 2007 (Internet Access only) and 2008.⁵ On November 4, 2010, USAC issued a COMAD rescinding committed funds for the District’s application for Telecommunications Services support for funding year 2007.⁶ Without exception, all of the FCDLs and COMADs state that the funding requests were rescinded because the District was “offered and accepted gifts, meals, gratuities, or entertainment from the service provider.” USAC has never alleged that the funding requests were being denied because of improper communications between the District and Trillion.

³ Funding Commitment Reports from USAC, Schools and Libraries Division (dated Sept. 28, 2010) (regarding FY 2010, FCC Form 471 application 717469, FRNs 1950846 and 1950833).

⁴ Funding Commitment Reports from USAC, Schools and Libraries Division (dated Sept. 29, 2010) (regarding FY 2009, FCC Form 471 application 662600, FRNs 1809627 and 1809646).

⁵ Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to Alfred Green, Falcon School District 49 (dated Oct. 21, 2010) (regarding FY 2005, FCC Form 471 application 466641, FRN 1299916); Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to Virginia Bryant, Trillion Partners, Inc. (dated Oct. 21, 2010) (regarding FY 2006, FCC Form 471 application 532406, FRNs 1472041 for Internet Access and 1472101 for Telecommunications Services); Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to David Bond, Falcon School District 49 (dated Oct. 21, 2010) (regarding FY 2007, FCC Form 471 application 577449, FRN 1606940 for Internet Access); Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to Virginia Bryant, Trillion Partners, Inc. (dated Oct. 21, 2010) (regarding FY 2008, FCC Form 471 application 627866, FRNs 1733138 and 1741016).

⁶ Notification of Commitment Adjustment Letter from USAC, Schools and Libraries Division, to Virginia Bryant, Trillion Partners, Inc. (dated Nov. 4, 2010) (regarding FY 2007, FCC Form 471 application 577449, FRN 1606490 for Telecommunications Services).

On November 11, 2010, Trillion filed with the Commission appeals of USAC's decisions denying the District's applications and rescinding funding commitments for funding years 2005 through 2010.⁷ On November 18, 2010, the District also appealed USAC's decisions denying the District's applications and rescinding funding commitments for funding years 2005 through 2010.⁸ On February 23, 2012, the Commission's Telecommunications Access Policy Division issued an *Order* denying the appeals filed by Trillion and the District.⁹ On March 22, 2012, Trillion and the District filed petitions for reconsideration of the Division's *Order*.¹⁰ Those petitions for reconsideration remain pending.

FRN for Funding Year 2012. On November 29, 2012, USAC issued a FCDL denying the District's E-Rate application with FRN # 2273735 for funding year 2012.¹¹ The FCDL states that the funding request was denied for the following reason:

“Consistent with FCC Order DA 12-260, the FCC has determined that your competitive

⁷ Letters from Trillion Partners, Inc. to Federal Communications Commission, Telecommunications Access Policy Division, CC Docket No. 02-6 (dated Nov. 11, 2010) (regarding FY 2005, 2006, 2007, 2008, 2009 and 2010) (collectively referred to as “*Trillion Appeals*”). In addition, Trillion had previously filed with the Commission a Master Appeal addressing the denial of applications and rescission of funding commitments by USAC of many of Trillion's customers, including the District. See Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 3, 2010).

⁸ Letter from Brad A. Miller, Law Office of Brad A. Miller, counsel to Falcon School District 49, to Federal Communications Commission (dated Nov. 18, 2010) (regarding Form 471 Application Numbers 466641, 717469, 662600, 577449, 627866, 532406) (“*Falcon's Appeal*”).

⁹ *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* (Telecommunications Access Policy Division, 2012) (“*Order*”).

¹⁰ Trillion Partners, Inc., Petition for Reconsideration re Falcon School District 49, CC Docket No. 02-6 (filed March 22, 2012) (“*Trillion's Petition for Reconsideration*”) (Attached as Exhibit A); Falcon School District 49, Petition for Reconsideration, CC Docket No. 02-6 (filed March 22, 2012) (“*Falcon's Petition for Reconsideration*”) (Attached as Exhibit B).

¹¹ Funding Commitment Report from USAC, Schools and Libraries Division (dated November 29, 2012) regarding Falcon School District 49, Funding Year 2012, FCC Form 471 Application No. 838063, Funding Request No. 2273735 (Attached as Exhibit C).

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 FRN at issue in this appeal (FRN # 2273735 for funding year 2012) and the FRNs for funding years 2005 through 2010 all arise out of the same FCC Forms 470 (Application Numbers 673760000514926 and 897280000639691) and the same competitive bidding processes that the Commission is considering pursuant to the pending petitions for reconsideration.¹² As demonstrated below, in denying this FRN, USAC erred in concluding that there was a violation of the Commission’s competitive bidding rules.

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

As noted above, USAC has never alleged that the funding requests were being denied because of improper communications between Trillion and the District. However, in a footnote, the *Order* states that, “With respect to ... Falcon School District 49 (Falcon), while USAC denied these applicants’ funding requests due to receipt of gifts, we find that these applicants violated the Commission’s competitive bidding violations [sic] by engaging in improper communications with their service provider....”¹³ 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

¹² 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 FRN at issue in this appeal is flawed, inefficient and unreasonable. On one hand, USAC will not hold in abeyance the FRN at issue in this appeal even though it relates to the same competitive bidding processes under reconsideration at the Commission, because this specific FRN has 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 FRN for funding year 2012. 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.

¹³ *Order*, 27 FCC Rcd 2010, ¶ 1, n.1.

address the concerns the Commission had about improper communications.¹⁴ The *Order* also states that, “Based on our review of the record, we find that petitioners violated the Commission’s competitive bidding requirements...”¹⁵ and that such denial is “consistent with precedent.”¹⁶ Other than this reference to the “record,” there is no actual discussion of the portion of the record the *Order* is relying on, the arguments and evidence presented by Trillion or the District, or why those arguments and evidence were found unpersuasive. Trillion believes that the competitive bidding process was open and fair and that any communications between Trillion and District did not amount to a violation of the Commission’s bidding rules.

While Trillion interacted with District personnel to clarify specifications and the existing infrastructure available at the District, Mr. Alfred Green, on behalf of the District, made himself available and did in fact interact with the representatives of other service providers in order to offer exactly the same insights.¹⁷ Thus, to the best of Trillion’s knowledge and belief, all potential bidders had access to the same information regarding the District’s technology needs and all potential bidders were treated the same. In addition, no presentations were made to the District’s Board of Education by any potential bidder prior to the contract award. As the District noted in its appeal:

Board meeting minutes from the relevant time period demonstrate that no presentations were made to the Board of Education prior to the exhaustion of the 28 day waiting period. Thereafter, the only presentation made to the Board of Education was by District staff and the presentation was unbiased and straightforward. District staff offered the Board of

¹⁴ 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 the District might understand the Commission’s concerns and, if appropriate, explain and defend those communications.

¹⁵ *Order*, 27 FCC Rcd at 2010-2011, ¶ 1.

¹⁶ *Id.*

¹⁷ *Falcon’s Appeal* at 2.

Education as broad as possible sets of alternatives prior to the adoption of the contract with Trillion by means of a detailed power-point presentation. Despite the fact that no formal proposal was submitted by Qwest, its services were described to the Board as well.¹⁸

Therefore, the competitive bidding process was “fair” because all bidders were treated the same.

The competitive bidding process was also “open” because none of the information provided to any prospective bidder was withheld from any other prospective bidder.¹⁹ As the District stated in its appeal, “each exchange contained only information that was readily available, not only to other bidders, but to the general public.”²⁰ The District also took steps to ensure that the Board of Education not only had information about each submitted bid, but also information from non-bidders. Specifically, the District informed the Board of Education of the services offered by the local exchange carrier (Qwest), even though that service provider did not submit a bid in response to the Form 470.²¹ This information was provided to allow the Board of Education to compare the proposals received so that a fully-informed decision was made about who should win the contract.

III. 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 FRN for funding year 2012, but the cases cited in the *Order*, while they

¹⁸ *Id.* at 3.

¹⁹ As the District suggested in its appeal, the withholding of any such information would have been prohibited by the Colorado Open Records Act. *Falcon’s Appeal* at 3. (“The information was available to the broad public pursuant to the Colorado Open Records Act. None of the information provided to any prospective bidder was withheld from any other prospective bidder.”).

²⁰ *Id.*

²¹ *Id.*

stand for the proposition that the bidding process must be open and competitive, do not support a denial of funding on the facts in this case.

In *Mastermind*, the Commission found violations of its competitive bidding rules when: (i) an individual associated with a service provider was listed as the contact person on an applicant's Form 470; (ii) an applicant delegated power in the competitive bid process to an entity that was also participating in the bidding; and (iii) one service provider is provided with information or access not also afforded to other service providers participating in the bid process.²² 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.²³ Neither Trillion nor anyone associated with Trillion was listed as the contact person on the District's Form 470 nor has USAC made such an allegation. The District at all times maintained control of the competitive bid process, which it initiated after conducting its "homework" on the technology best suited to its unique needs.

In *Approach Learning*, the Commission found a connection between the contact person listed on the Form 470 and the service provider that ultimately won the contract. The Commission believes "that the contact person exerts great influence over an applicant's competitive bidding process by controlling the dissemination of information

²² *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, 4033 ¶ 10 (2000).

²³ *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).

regarding the services requested.”²⁴ As noted above, the contact and communication between Trillion and the District was permissible and did not violate the rules and regulations that govern the E-Rate program because all service providers were treated the same when it came to contact and communication. In addition, Trillion was not the contact person on the District’s Form 470, nor did Trillion influence the District’s competitive bidding process.

IV. Conclusion

For the reasons set forth above, Trillion respectfully requests grant of the instant Petition for Review with respect to the District’s E-Rate application for funding year 2012.

Respectfully submitted,

TRILLION PARTNERS, INC.

By: /s/ Henry M. Rivera

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Its Attorneys

Dated: January 18, 2013

²⁴ *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).