

- Completing its Year 7 E-Rate application and selecting a vendor before the required 28-day waiting period had elapsed;
- Hiring and permitting ERC to begin work on the ROI analysis before the required three quotes were received;
- Publishing RFPs and implementing plans for WAN and VoIP before the ROI analysis established that WAN and VoIP were needed;
- Applying for Year 9 E-Rate funding before the required tech plan was completed and approved;
- Working with Trillion on the District's WAN design long before the RFPs were issued or Trillion was selected as an approved vendor.

Until the District learns to follow required procedures, it will continue to find itself in situations such as this – where it not only lost out on the opportunity for Year 9 E-Rate funding, but spent tens of thousands of dollars with no results.

5. Trillion And ERC Colluded On The TUSD Project

a. Trillion And ERC Were E-Partners Working Together Long Before The TUSD Project

Before getting involved with TUSD, Trillion and ERC were already e-partners. In the June 2005 ePartner Reseller Agreement, ERC appointed Trillion as its nonexclusive agent to sell and service ERC's compliance services to school districts. In return, Trillion was given free access to ERC's ServCast program, which allowed Trillion to identify potential customers by data mining E-Rate filings. The E-Partner Agreement also contained a restrictive covenant prohibiting Trillion from reselling service contracts for any other e-rate consulting companies. A copy of this E-Partner Agreement is attached at TAB 79. Trillion asserts that it never sold any service contracts for ERC, and an April 2006 e-mail shows Trillion proposing that its ServCast subscription be paid for with money ERC owed for the e-rate seminars it sponsored with Trillion. See TAB 80.

Even if Trillion was not actually selling ERC's services, the two companies developed a close, symbiotic relationship. Throughout 2005, Trillion and ERC jointly sponsored e-rate seminars in Colorado, California and Arizona. They also worked together and communicated regarding e-rate projects at several different school districts. Attached at TAB 81 is a May 2005 e-mail from Trillion's Gary Gaessler regarding Jon Slaughter, ERC's Chief Executive Officer, and an upcoming school district meeting at the Canon City (Colorado) School District. Attached at TAB 82 is an August 2005 e-mail where Mr. Gaessler recommends ERC and Jon Slaughter to the Bloomfield School District in New Mexico. Then in September 2005, Trillion and ERC discussed working together to set up

meetings with the Arizona Department of Education (ADE). Mr. Gaessler suggested that they try to get the Director of Educational Technology at ADE to host an e-rate seminar, and that Jon Slaughter could speak at the seminar and Trillion and ADE could share the seminar costs. See TAB 83.

Finally, on November 8, 2005, there is an e-mail exchange between Trillion's Gary Gaessler and ERC's Dan Kettwich where they discuss working together on their sales pitches to Arizona school districts. Mr. Kettwich comments that he is "trying to get with Tucson Unified, and Scottsdale as well." Suggesting they focus on joint meetings, Mr. Gaessler forwards a spreadsheet showing his contacts at Arizona school districts, commenting that he can get Mr. Kettwich introductions to those contacts on the spreadsheet that he has highlighted in green, and that he wants in on those contacts he has highlighted in yellow. On the spreadsheet, TUSD is highlighted in green, indicating that Mr. Gaessler could get ERC an introduction to the District. A copy of this e-mail exchange and the spreadsheet are attached at TAB 84. This e-mail exchange occurred only two days before Mr. Gaessler introduced ERC to TUSD, yet Mr. Gaessler never mentioned Trillion's relationship with ERC, either in his e-mail introducing ERC to the District or in any subsequent e-mails.

Trillion endeavored to keep its relationship with ERC secret, and for good reason. In September 2005, a Trillion salesman unintentionally sent one of ERC's competitors, Infinity Communications and Consulting, an invitation to an e-rate seminar sponsored by both Trillion and ERC. In an effort to smooth over his gaffe, the salesman suggested that Infinity and Trillion could co-sponsor a future e-rate event. In response, Infinity commented:

Thanks for the offer but we make it a policy to not co-present with any service providers. I hope you can appreciate our position. Too many people are going to jail and we can't be seen as having any type of partnered alliances with any service provider(s).

Having reminded Trillion of the legal risks of such alliances, Infinity pointed out that ERC's website listed Trillion as one of ERC's ePartners. A copy of this e-mail exchange is attached at TAB 85. Forwarding this e-mail to Trillion's Roger Clague, the salesman stated that Infinity could "cause some legal problems concerning our E-Rate seminars. You may ask ERC to remove Trillion on their web site."

Despite the potentially dire legal consequences, Trillion and ERC continued their alliance, jointly sponsoring e-rate seminars and working together on sales pitches to Arizona school districts. Trillion also continued to keep the alliance secret. As late as January 2006, Trillion was e-mailing ERC asking it to remove Trillion's logo from ERC's website. Trillion's Jennifer Sigmund complains, "Dan, it is still on there! I'm starting to get a bit cranky about this. Please get it removed ASAP. Thanks." See e-mails attached at TAB 86.

b. Trillion And ERC's Collusion Continued During TUSD's E-Rate Application And Procurement Process

Before TUSD's procurement process even started, Trillion and ERC began conspiring to ensure both companies were awarded District contracts. Only two days after Trillion's Gary Gaessler and ERC's Dan Kettwich agreed to work together to pitch both companies to Arizona school districts, Mr. Gaessler introduced ERC to TUSD, one of the school districts that Mr. Kettwich had said he wanted to get in with. See TABS 26 and 84. Less than two weeks later, TUSD initiated its flawed procurement process for the ROI analysis.

TUSD's solicitation for price quotes for the ROI analysis required vendors to submit price quotes no later than November 30th. On November 28, 2005, two days before ERC submitted its quote to the District, Jon Slaughter sent a draft of ERC's ROI quote to Trillion. See e-mail attached at TAB 87. No explanation was given for why Trillion would need to review ERC's proposal before the District ever saw it. Two days later, on November 30, 2005, when he e-mailed ERC's quote to the District, Mr. Kettwich noted that the ROI solicitation did not mention WAN and explained that an integrated WAN/IP TEL infrastructure could be cost effective. See TAB 34. An integrated WAN/IP TEL system was, of course, what Trillion proposed for the District. On this same day, ERC sent another copy of its quote submission to Trillion. See e-mail attached at TAB 88. Mr. Gaessler forwarded ERC's quote to Messrs. Clague and Davis, Trillion's two vice-presidents, stating "Here is the consulting proposal ERate consulting sent Tucson USD. Note the mention in the below of the WAN and managed IP Tel services. . . I worked with Dan [Kettwich] this AM and found him an IP Tel consultant they could sub contract that is Shoretel savvy." See TAB 88. Trillion was heavily promoting ShoreTel IP Tel equipment.

ERC began working on the District's ROI analysis by December 9, 2005, and started on the District's E-Rate applications by December 15, 2005. At that point, any communication with prospective vendors should have ceased. Yet on December 20, 2005, when Messrs. Gaessler and Clague were in Tucson to meet with Rudy Flores, they also had a dinner meeting with ERC's Dan Kettwich, at which they discussed TUSD's ROI project and its IP Tel needs. There is no evidence that ERC ever discussed the ROI project and the District's IP needs with other prospective vendors. A few days later, Mr. Gaessler asked Vasili Triant to send ShoreTel's IP Tel TCO items directly to Dan Kettwich, thus allowing ERC to review information from Trillion's preferred provider while ERC was working on the District's E-Rate applications. See e-mail attached at TAB 89.

Trillion continued communicating with ERC during the E-Rate application process. On January 9, 2006, ERC's Dan Kettwich e-mailed Scott Smyth, Trillion's Vice-President of Legal and Regulatory Services. Scott Smyth responded the same day, setting up a conference call with Gary Gaessler and Dan Kettwich. See e-mail attached at TAB 90. Then, on January 11th, Mr.

Smyth e-mailed ERC's Jon Slaughter, who had apparently asked for clarification from Trillion about its voice services. In his response, Mr. Smyth provided sample Form 470 language, commenting on what he calls "successful 470s":

Typically we see successful 470s just refer to "Wide Area Network" because the voice functionality is simply a subset of that. We have also seen funding approved for 470s that referred to "Digital Transmission Services" (e.g., 470 # 961680000493104).

A copy of this e-mail is attached at TAB 91. Trillion's "successful 470s" are, of course, those that Trillion would qualify for or those that would fund the services Trillion provides. Just two days after receiving Trillion's suggestions, ERC posted the District's Form 470s on the USAC website.

Trillion's communications with ERC did not stop even after the Form 470s were posted and the RFPs issued. In mid-January, as Trillion personnel were preparing Trillion's RFP proposal, Mr. Gaessler noted, "ERC says even though it [says] Cisco parts #'s they are open to other vendors," indicating that he had already spoken with ERC regarding the RFP specifications. See e-mail attached at TAB 92. While every other vendor had to submit questions through TUSD's purchasing department, Trillion was able to seek clarification directly from ERC. Because of their alliance, Trillion and ERC were sharing information with each other -- information that other prospective vendors simply did not have.

On January 31, 2006, Mr. Gaessler e-mailed Trillion's Scott Smyth:

Steve mentioned you spoke with Slaughter and his thinking is Hybrid WAN and also Trillion purchasing their PBX. I heard he is in Tucson working with TUSD this week. Can we do a call with him tomorrow and lets drill down on these items.

FYI: I have not spoke with him in a while and I believe his WAN hybrid thinking is from some very initial conversations we had before TUSD told us it may be a political nightmare working with the city to get access to that fiber.

See e-mail attached at TAB 93. Then on February 2, 2006, Mr. Gaessler e-mailed Trillion Vice-President Steve Davis that ERC's Dan Kettwich had called with "some WAN bandwidth questions for TUSD," asking if they could call him back together. See e-mail attached at TAB 94. These e-mails reveal not only that Trillion and ERC were talking to each other about the TUSD project, but also the extent to which Trillion influenced ERC and shaped the RFP language.

Also on February 1st and 2nd, there is this revealing e-mail exchange between Gary Gaessler, Steve Davis and Mark Rammer, a Trillion employee working on the TUSD proposal:

Rammer: New Questions for Tucson. Please delete the previous ones. Thanks. 1. How many analog lines are dedicated to fax machines per site? 2. How many simultaneous inbound and outbound calls will you have for the entire district?

Gaessler: Steve: According to the RFP the deadline was Jan 25th 2006 for questions. Should we funnel these through ERC?

Davis: Yes.

Gaessler: OK, can you ask Scott [Smyth] to ask Jon these questions? Also my wife needs an inventory list of their existing Nortel PBX's to quote them.⁴² Can Jon get that also?

A copy of these e-mails is attached at TAB 95. Trillion was asking questions and getting clarification from ERC even after the RFP's deadline for questions had passed. Trillion was intentionally using its alliance with ERC to sidestep the procurement rules and gain an advantage over other prospective vendors.

c. Trillion And ERC Violated Antitrust Laws, The School Procurement Code, And USAC's E-Rate Program Rules

Competition was harmed by the collusion between Trillion and ERC because in drafting the District's E-Rate applications and RFPs, ERC was influenced by Trillion. Competition was also harmed by the fact that other vendors did not have access to all the information available to Trillion, by virtue of its relationship with TTS staff and its alliance with ERC. Consequently, some vendors simply decided not to bid on the RFPs while others submitted bids that were not as strong as they could have been had the competition been fair.

After the RFPs were issued many prospective vendors submitted questions to the District. Notably, Trillion did not submit any questions. It already had much of the information that the other prospective vendors sought, or it could get that information directly from ERC. For example, on January 31, 2006, a prospective vendor by the name of Shared Technologies submitted questions asking for information on the District's PBXs. A copy of this e-mail is attached at TAB 96. The vendor commented: "These RFP's are quite extensive and involved and without the requested information, it would be difficult for any vendor to respond with a totally technical and professional solution."

⁴² According to Trillion, Mr. Gaessler's wife worked for Straticom, Inc., which apparently decided against submitting a proposal to purchase TUSD's legacy phone system.