



UNITED STATES DEPARTMENT OF COMMERCE  
**National Oceanic and Atmospheric Administration**  
ACQUISITION AND GRANTS OFFICE

September 26, 2012

Mr. Ralph Brown  
Trillion Communications Corporation  
4000 Farr Drive  
Bessemer, AL 35022-4836

Re: Broadband Technology Opportunities Program (BTOP) Trillion Communications Corporation  
(Trillion) South Central Alabama Broadband Commission (Grant Award No. NT10BIX5570130)  
Notice of Termination of Award

Dear Mr. Brown:

Upon acceptance of a grant from the U.S. Department of Commerce (Grant Award No. NT10BIX5570130), Trillion agreed to comply with requirements specified in the terms and conditions of the award. The National Oceanic and Atmospheric Administration's (NOAA) Grants Office received notice from the National Telecommunications and Information Administration's (NTIA) Program Office in December 2011 that Trillion has not materially complied with these terms and conditions. After attempting to resolve its concerns in two separate Corrective Action Plans (CAP) this spring, NOAA issued a 60-Day Notice of Termination on May 22, 2012, advising you that Trillion's award was subject to termination for material noncompliance and requiring Trillion to submit revised responses to the CAPs by June 5, July 5, and July 13, 2012, respectively.

NTIA has thoroughly reviewed Trillion's responses to the CAP and has determined they do not adequately remedy NTIA's concerns regarding the project's performance progress, schedule and implementation, budget and match, and organizational capacity. Trillion's proposal reduces the level of benefits that this project will provide Alabama compared to the level approved in its original application, which is incorporated by reference into the award terms and conditions. In addition, Trillion's proposal is deficient in providing a schedule to execute the newly proposed project scope within required timeframes, documenting the commitment of matching (cash or in-kind) funds, and implementing the organizational oversight necessary to successfully manage the project. (Details regarding the deficiencies are provided in Appendix A). NTIA has recommended to NOAA that it terminate Trillion's award and accordingly, NOAA hereby terminates Trillion's award, effective immediately.

**REASON FOR TERMINATION:** In July 2010, Trillion was awarded a \$59.2 million BTOP grant for a project that proposed bringing high-capacity broadband capabilities to eight Alabama counties through a public-private partnership between A2D, Inc., and the South Central Alabama Broadband Commission (SCABC). The approved project included a 2,200 route mile network (approximately 1,400 middle mile and approximately 800 last mile), 15,000 fiber-to-the-home (FTTH) connections, WiMax last mile connectivity in four towns, and service to 418 Community Anchor Institutions (CAIs). Upon acceptance of the grant award, Trillion agreed to comply with requirements specified in the terms and conditions of the award. However, since accepting the award, Trillion has experienced ongoing difficulties in administering the project and complying with the terms and conditions of the award.

Prior to this Notice of Termination, NTIA and the NOAA Grants Office provided Trillion with a number of opportunities to take corrective action with respect to its award deficiencies. Enclosed is a “Chronology of Major Trillion Meetings and Actions” that summarizes our attempts to assist you in addressing Trillion’s BTOP project’s deficiencies.

**RESULT:** Despite its efforts to resolve NTIA’s and NOAA’s concerns, Trillion remains in material noncompliance with the terms and conditions of its BTOP award for its (1) inability to adhere to the approved construction plan and project implementation schedule described in their grant award; (2) failure to develop viable and sustainable alternatives in CAP responses; and (3) inability to set forth plans to adequately resolve persistent and chronic issues surrounding performance progress, budget and match, schedule and implementation, and organizational capacity. As a result, pursuant to 15 C.F.R. § 14.62(a)(3), NOAA will issue a CD-451 terminating Trillion’s award, effective immediately, due to material noncompliance with the terms and conditions of the award.

Costs that you incur after the termination are not allowable unless expressly authorized by the NOAA Grants Office and NTIA. At this time, only costs related to close out of the award (*e.g.*, final reports, audits) and the security and safekeeping of grant-acquired equipment are allowable until Trillion completes the disposition of BTOP-funded property. Other costs resulting from the obligations, which Trillion properly incurred before the effective date of termination, may be allowable under certain circumstances if such costs were necessary and not reasonably avoidable. *See* 15 C.F.R. § 14.62(c).

**PROPERTY/EQUIPMENT DISPOSITION:** As provided in 15 C.F.R. part 14 and the terms and conditions of this award, NTIA retains a federal interest in all grant-acquired equipment. Trillion is required to ensure the security and safekeeping of all grant-acquired equipment until Trillion has received property/equipment disposition instructions from NOAA. NOAA will provide detailed disposition instructions in the next 30 days.

Under the closeout requirements, Trillion must submit the documents below within 90 days of the award end date, which is the issuance date of the CD-451, to close out the award:

- A final program-specific audit report for Trillion and any grant-funded subrecipients, including any costs incurred during the closeout period
- Uniform Commercial Code (UCC-1) filings, security interest covenants, and attorney’s certification
- Tangible Personal Property Report (Form SF-428)
- Real Property Report (Form SF-429)
- Final Quarterly and Annual Performance Progress Reports
- Final American Recovery and Reinvestment Act Report
- Final Federal Financial Report (Form SF-425)
- Final Budget and Expenditure Comparison (Form SF-424C)
- Final request for reimbursement (Form SF-270)

Any federal funds paid to Trillion in excess of the amount to which Trillion is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. A debt may be established if any of the following occur: (1) Trillion fails to provide financial or performance progress reports; (2) Trillion drew down funds to cover unallowable costs (*e.g.*, may be determined later through audit); or (3) Trillion fails to provide the non-federal matching funds required by the terms and conditions of the award. Failure to pay any established debt may result in additional adverse actions, including but not limited to, debarment of Trillion and its key personnel.

Trillion's award is hereby terminated today. This decision is final and not subject to appeal. Consideration of this adverse action may be used in future funding decisions for Trillion. The current award will be revised to include a term and condition which terminates Trillion's award.

Sincerely,

A handwritten signature in blue ink that reads "Arlene Simpson Porter". The signature is fluid and cursive, with the first name "Arlene" being the most prominent.

Arlene Simpson Porter  
Director, NOAA Grants Management Division

Enclosure

cc: Lawrence E. Strickling, Assistant Secretary for Communications and Information  
Anthony Wilhelm, Director, Broadband Technology Opportunities Program

Award Details:

Award Number: NT10BIX5570130

Program Officer: Max Fainberg

Program Office: National Telecommunications and Information Administration

Award Period: 08/01/2010-07/31/2013

Project Title: South Central Alabama Broadband Commission (SCABC - CCI)

Recipient Name: Trillion Communications Corp.

Grants Specialist: Larry Jenkins

## APPENDIX A

### Specific Deficiencies for Trillion's Response to May 22, 2012 CAP:

#### 1) Performance Progress

- a) The CAP responses to date inadequately addressed NTIA's and NOAA's concerns regarding the fact that significant expenditures have not resulted in sufficient overall network deployment to date. Trillion has been unable to provide sufficient documentation to support all expenditures to date, and the documentation that has been provided revealed significant unallowable expenses across the project.
- b) The CAP responses revealed a lack of organizational management and oversight to ensure that federal funds expended were allowable and resulted in progress executing the project.
- c) The revised proposal for the project provides significantly fewer benefits to the people of Alabama than the project as originally approved and funded. This proposal would reduce the size of the project by eliminating the fiber-to-the-home and wireless features of its original proposal, but would not reduce the amount of federal funding requested.

#### 2) Budget and Match Status

- a) Trillion also submitted a revised budget to reflect the new project scope. The revised budget proposes using the full grant amount to execute a significantly smaller project. In addition, the response did not provide sufficient assurances that the smaller project can be completed on budget.
  - i) The primary component of the revised budget is based on a design and construction contract. While Trillion has executed a contract, it provided no additional detail on the anticipated costs to support this figure and no assurances that the contractor would be able to complete the project for this amount.
  - ii) There appear to be several errors in the budget that raise questions about whether all necessary components can be completed with the amount of federal funding requested.
- b) Trillion's original application and previous CAP responses proposed several sources of cash match (including loans and bonds). Due to challenges identifying cash match options, Trillion's final CAP response proposed to replace its cash match obligation with an in-kind contribution equivalent to the value of the right of way (ROW) along the 1,386 route miles required for the project.
  - i) NTIA and NOAA believe that the value of the ROW is overstated because it is based on the value of owning the land, rather than the right to access land through a permit or easement.
  - ii) Despite submitting a third party valuation document and a letter from the match contributor, Trillion was not able to provide definitive documentation from all state and county ROW owners that they supported the valuation methodology or were willing to contribute the land itself as in-kind match.
  - iii) Trillion was not able to provide documentation for the remaining match requirement (beyond the value of the ROW).

#### 3) Schedule and Implementation

- a) As required in the CAP letter, Trillion identified a design and construction firm and signed a Master Service Agreement and Notice to Proceed. Trillion missed its deadline to provide a detailed project plan but followed up with a high-level project plan in the third CAP submission. However, the CAP responses failed to sufficiently specify how Trillion intends to implement the plan to successfully execute the project during the remaining award period.
  - i) The dates provided in the project plan are unrealistic (*e.g.*, lifting the suspension on 7-16-12).
  - ii) The plan lacked detail on many key construction components (*e.g.*, permitting, CAI connections).

- iii) Trillion did not provide the level of detail requested regarding resumes and references for the construction firm staff.
- iv) The contractor also serves as the lead construction contractor for another BTOP project and the two lead project managers from that deployment are also proposed to lead Trillion's deployment. The CAP responses did not address contract oversight and monitoring to ensure that, given the demands of the other project, Trillion can complete its project on schedule and in accordance with grant requirements.
- b) Trillion also provided a business plan, operational plans, and pro forma projections, but the level of detail in these submissions is inadequate and often contradicts other information in the CAP response. More importantly, the response does not address how Trillion (as the recipient of the award) intends as a matter of organization to manage the project on a going forward basis. Trillion provides no specifics on how Trillion intends to monitor the various work streams including:
  - i) the oversight of the prime network deployment contractor and its sub-prime network deployment contractor the selection and oversight and a yet-to-be-determined network operator
  - ii) the management and monitoring of the subrecipient, the South Central Alabama Broadband Commission (SCABC)

#### **4) Organizational Capacity**

- a) The CAP response did not sufficiently identify how the various organizations involved in the grant project will be managed on a day-to-day basis going forward. The few roles and responsibilities outlined in the response did not include key roles such as subrecipient and vendor oversight, one of the key concerns outlined in previous CAPs.
  - i) Trillion did not provide a comprehensive organizational chart, and the information regarding roles and responsibilities did not describe how the entities involved in the grant would coordinate to execute the project or how Trillion would oversee all project components.
  - ii) The response did not identify which entity will be responsible for overseeing and monitoring the design and construction contractors. Based on the resumes provided, neither Trillion nor SCABC has the expertise to oversee the construction firms. Trillion, as the prime recipient, also has limited resources and expertise to coordinate construction efforts and provide oversight of vendors going forward.
  - iii) The CAP response did not identify the specific SCABC personnel that would be responsible for operating the network on a going forward basis post-construction. Based on the resumes provided, SCABC does not appear to have the broadband or telecommunications expertise to successfully run the network's operations on a day-to-day basis. The post-construction plan provides only straw-man, generic position descriptions for all key operational, sales and marketing, product management, finance and accounting, human resources and network operations. No specific candidates or existing SCABC employees are aligned with any of the positions, and no plan or timeline was provided for hiring appropriate staff.
  - iv) Trillion was unable to identify how or when a network operator will be selected or which of the entities involved in the project would select and oversee the network operator.

## Chronology of Major Trillion Meetings and Actions

<i>Date</i>	<i>Event</i>	<i>Summary</i>
July 10, 2011	Award Action Request	<p>Trillion submitted a request for match proportionality waiver until December 31, 2011. As part of its request, Trillion provided a letter discussing that one of its original funders would not provide match and indicating that Trillion and its subrecipient began collaborating with a financial institution regarding a match loan and funds should be available in August 2011.</p> <p>NOAA Grants Office approved the Proportionality Waiver on July 11, 2012.</p>
October 6, 2011	BTOP Mid-Course Cleveland Workshop	Trillion and its subrecipient's staff met with NTIA personnel and indicated that loan was finalized; however, Trillion had not received matching funds for its award.
November 1, 2011	NTIA Staff Conference Call with Trillion	Trillion indicated bank required further paperwork, but it anticipated receiving loan proceeds on November 14, 2011.
December 13, 2011	NTIA Staff Conference Call with Trillion	NTIA staff identify that, despite substantial drawdowns, Trillion has made only limited progress on project activities.
December 19, 2011	NTIA Staff Conference Call with Trillion team and Broadway Capitol	NTIA staff identify that, to date, Trillion has secured only a small portion of its matching funds through loans from multiple banks and agency remains concerned about Trillion's ability to meet its matching requirements.
December 21, 2011	NTIA Recommendation of ASAP Suspension	NTIA requests that the NOAA Grants Office suspend Trillion's ASAP account immediately, pursuant to 15 C.F.R. § 14.62(a)(1), as a result of NTIA's concerns with limited progress relative to substantial expenditures as well as concerns about Trillion's ability to secure funding to meet the match requirement. In addition, NTIA requests that the NOAA Grants Office place Trillion under a CAP, pursuant to 15 C.F.R. §§ 14.14 and 14.62, until it demonstrates that it is in compliance with the terms and conditions of the award and can complete the project within the three-year period of performance.

## Chronology of Major Trillion Meetings and Actions

<i>Date</i>	<i>Event</i>	<i>Summary</i>
December 22, 2011	NOAA CAP/ASAP Suspension Letter	<p>NOAA suspends Trillion's ASAP account and places Trillion under a CAP. NTIA/NOAA require a response to CAP by January 27, 2012 to provide materials addressing three areas of concern:</p> <ul style="list-style-type: none"> <li>Performance Progress</li> <li>Narrative addressing NTIA's concerns</li> <li>Table reflecting actual progress and projections</li> <li>Updated organizational chart</li> <li>Budget and Match Status</li> <li>Current budget status and projections</li> <li>Budget deviations and strategy to address impact</li> <li>Status of matching funds</li> <li>Documentation confirming two bank loans</li> <li>Status of all in-kind contributions and valuations</li> <li>Procurement process for three vendors</li> <li>Schedule</li> <li>Updated deployment plans and detailed schedule</li> <li>Current and anticipated mitigation activities</li> </ul>
January 27, 2012	Trillion CAP Response	Trillion submits CAP response.
January 31, 2012	<p>Letter to Tony Wilhelm from Robert Wood (SCABC)</p> <p>Follow-up Call from NTIA Staff to Robert Wood (SCABC)</p>	Trillion's project partner, SCABC, indicates interest in taking over the Trillion award. NTIA staff follow up with a call to Mr. Wood, in which they discuss SCABC's efforts to secure bond financing for the project and coordination of transactions between SCABC and its design-build subrecipient.
February 3, 2012	NTIA Staff Conference Calls with Robert Wood (SCABC)	Conference calls occur among NTIA staff, Mr. Wood, and two different banks regarding the anticipated SCABC bond offering.
February 8, 2012	NTIA Recommendation of Suspension and Stop Work	NTIA determines that Trillion's CAP response is deficient. NTIA recommends that NOAA issue a stop work order and request additional information from Trillion. NTIA also recommends that NOAA suspend Trillion's award in 30 days, pursuant to 15 C.F.R. § 14.62(a)(3), if Trillion does not fulfill the requirements of the CAP.

## Chronology of Major Trillion Meetings and Actions

<i>Date</i>	<i>Event</i>	<i>Summary</i>
February 8, 2012	NOAA 30-Day Notice of Suspension/ "Stop Work" Letter	<p>NOAA issues a unilateral stop work amendment instructing Trillion to stop all project work immediately with the exception of the work needed to implement the CAP response, secure any grant-funded equipment, and safely halt any construction that may have begun. NOAA notifies Trillion that the CAP response is deficient and notifies Trillion that its award may be suspended in 30 days if it does not fulfill the requirements of a CAP.</p> <p>NTIA/NOAA require response by March 9, 2012 to provide materials addressing four areas of concern:</p> <ul style="list-style-type: none"> <li>• <i>Performance Progress</i></li> <li>• <i>Budget and Match Status</i> Evidence that Trillion has secured a source of funds for its match by March 9, 2012; Documents regarding claimed financial institution loans and proposed bond offering</li> <li>• <i>Schedule and Implementation</i> Detailed and granular deployment plan; Mitigation plans and associated project management approach; Other implementation details</li> <li>• <i>Organizational Capacity</i> Plan to manage communication and coordination</li> </ul>
February 16, 2012	Request for Reimbursement	Trillion submits a request for reimbursement of costs incurred between the date of the initial CAP (December 22, 2011) and the "Stop Work" letter (February 8, 2012).
February 21, 2012	Letter from Trillion to BTOP and NOAA Grants Office Staff	Letter outlines "game changing measures" and associated timelines. The letter also includes a request to temporarily lift suspension and extend the 67% substantially complete milestone.
February 28, 2012	NTIA Staff Conference Call with Trillion	Trillion and NTIA staff discuss Trillion's efforts to secure matching funds.
March 6, 2012	NTIA Staff Conference Call with Trillion	Trillion and NTIA staff discuss project status. In a follow-up email, Trillion submits draft CAP response.
March 8, 2012	Email from NTIA Staff to Trillion	NTIA staff provides feedback on Trillion's draft CAP response.
March 8-9, 2012	Trillion CAP response	Trillion submits CAP response.
March 13-15, 2012	NTIA and NOAA Site Visit	Site visit to Trillion's headquarters in Bessemer, Alabama and subrecipient's offices in Atlanta, Georgia and storage facilities in Hayneville, Alabama to review invoices and inspect grant-funded property.



## Chronology of Major Trillion Meetings and Actions

<i>Date</i>	<i>Event</i>	<i>Summary</i>
May 22, 2012	NOAA Suspension/60-day Notice of Termination Letter	<p>NOAA suspends the Trillion award. NOAA notifies Trillion that the CAP response is deficient and notifies Trillion that its award may be terminated in 60 days if it does not fulfill the requirements of a CAP.</p> <p>NTIA/NOAA require responses June 5, July 5, and July 13, 2012 to provide materials addressing four areas of concern:</p> <ul style="list-style-type: none"> <li>• Performance Progress</li> <li>• Budget and Match Status</li> <li>• Schedule and Implementation</li> <li>• Organizational Capacity</li> </ul>
June 5, 2012	Trillion CAP Response	Trillion submits first of three part CAP response.
July 5, 2012		Trillion submits second of three part CAP response.
July 13, 2012		Trillion submits third and final part of CAP response.
September 2012	NTIA recommendation to terminate Trillion award	<p>NTIA determined that the CAP response did not adequately address the multiple concerns related to performance progress, budget and match, schedule and implementation, and organizational capacity that were raised by NOAA and NTIA in previous correspondences. In addition, Trillion's CAP response proposed a project that is significantly different in scope and size than what was originally approved for the grant award, though the requested amount of federal funding is unchanged. The revised plan removed all last mile build-out to residential customers and all WiMax last mile components, and it included fewer (and different) CAI connections than the originally approved plan. The resulting plan provides significantly less value to the federal government and the communities of Alabama for the same federal funding amount.</p>