

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
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
School and Libraries Universal Service
Support Mechanism
File Nos. SLD-663273, et al.
File Nos. SLD-520538, et al.
File Nos. SLD-650947, et al.
File Nos. SLD-520538, et al.
CC Docket No. 02-6

ORDER

Adopted: November 4, 2011

Released: November 4, 2011

By the Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant appeals filed by Dimmitt Independent School District (Dimmitt), East Central Board of Cooperative Educational Services (East Central BOCES), Houston County Schools (Houston), and Trillion Partners, Inc. (Trillion) of decisions by the Universal Service Administrative Company (USAC) concerning applications for discounted services under the E-rate program (more formally known as the schools and libraries universal service program) for funding years (FY) 2006-2010. Specifically, USAC denied the applications on the ground that the applicants' competitive bidding processes violated the Commission's rules because the applicants' accepted gifts from their service provider, Trillion. Upon review of the record, we find that the applicants did not violate the Commission's competitive bidding rules that existed at the time. We therefore grant these appeals and remand the

1 See appendix. In this order, we use the term "appeals" to generically refer to petitioners' requests for review of USAC's decisions. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c). Trillion filed appeals concerning the applications submitted by Dimmitt, East Central BOCES, Houston, and Espanola Public School District (Espanola). Unlike Dimmitt, East Central BOCES, and Houston, Espanola did not file a separate appeal. See appendix.

2 47 C.F.R. § 54.504 (2006) amended by 47 C.F.R. § 54.503 (2011).

underlying applications to USAC for further action consistent with this order no later than 60 calendar days from the release date of this order.

II. BACKGROUND

2. E-rate Program Rules and Procedures. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.³ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁴ In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services, such as tariffed telecommunications services, month-to-month Internet access, or any services for which the applicant is seeking a new contract.⁵ After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.⁶ The Commission has consistently stated that the competitive bidding process must be fair and open and not have been compromised because of improper conduct by the applicant, service provider, or both parties.⁷ In essence, all potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.⁸ Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form 471 requesting support for eligible services.⁹ USAC assigns

³ 47 C.F.R. §§ 54.501-54.502.

⁴ 47 C.F.R. § 54.503. An existing contract signed on or before July 10, 1997 is exempt from the competitive bidding requirements. See 47 C.F.R. § 54.511(c).

⁵ 47 C.F.R. § 54.503(c).

⁶ 47 C.F.R. § 54.503(c)(4). See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Approach Learning and Assessment Center, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (2008).

⁷ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 26912, 26939, para. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *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.*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028 (2000) (*Mastermind Order*) (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); see also *Request for Review by Dickenson County Public Schools, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002); *Request for Review by Approach Learning and Assessment Center, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 22 FCC Rcd 5296, 5303, para. 19 (Wireline Comp. Bur. 2007) (*Approach Learning Order*) (finding that service provider participation may have suppressed fair and open competitive bidding). More recently, in the *Schools and Libraries Sixth Report and Order*, the Commission codified the existing requirement that the E-rate competitive bidding process be fair and open. See *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket 02-6, 25 FCC Rcd 18762, 18798-800, paras. 85-86 (2010) (*Schools and Libraries Sixth Report and Order*); 47 C.F.R. § 54.503.

⁸ See *Mastermind Order*, 16 FCC Rcd at 4033, para. 10.

⁹ See *Schools and Libraries Universal Service, Services Ordered and Certification Form*, OMB 3060-0806 (November 2004) (FCC Form 471).

a funding request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.¹⁰

3. Dimmitt Requests for Review. Dimmitt submitted its FCC Form 470 to USAC to initiate the competitive bidding process for E-rate eligible services on November 15, 2007 for FYs 2008 through 2010.¹¹ Trillion was the only service provider to respond to the FCC Form 470.¹² Trillion proposed to amend its existing contract with Dimmitt to incorporate the additional requested equipment and services.¹³ In February 2008, Dimmitt signed another multi-year contract with Trillion and filed its FCC Form 471 applications for funding years 2008 through 2010.¹⁴ USAC denied Dimmitt's applications on the ground that Dimmitt violated the Commission's competitive bidding rules in FY 2008 because three of its district employees accepted gifts, specifically meals, from Trillion in February 2008 totaling approximately \$97.¹⁵ Dimmitt then filed the instant requests for review with the Commission arguing, among other things that, that they did not violate the Commission's competitive bidding rules because: (1) Trillion was the only vendor to submit a proposal; (2) Dimmitt adhered to the Texas statutes on the acceptance and reporting of gifts; (3) those employees that received the meals had no input in the district's decision to select Trillion; and (4) the meals were not valuable enough to constitute a conflict of interest.¹⁶

¹⁰ See USAC website, Schools and Libraries, Funding Commitment Decision Letter, <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited Nov. 3, 2011).

¹¹ See FCC Form 470, Dimmitt Independent School District (posted Nov. 15, 2007). Dimmitt previously signed a multi-year contract with Trillion in December 2003 for five years with a subsequent amendment to this agreement in January 2006 in order to comply with state law. See Dimmitt Requests for Review; FCC Form 470, Dimmitt Independent School District (posted Oct. 29, 2003).

¹² See Dimmitt Requests for Review.

¹³ *Id.*

¹⁴ See FCC Form 471, Dimmitt Independent School District (filed Feb. 7, 2008) (regarding Dimmitt FY 2008 FCC Form 471 application number 619342); FCC Form 471, Dimmitt Independent School District (filed Jan. 29, 2009) (regarding Dimmitt FY 2009 FCC Form 471 application number 663273); FCC Form 471, Dimmitt Independent School District (filed Jan. 28, 2010) (regarding Dimmitt FY 2010 FCC Form 471 application number 733584).

¹⁵ See Letter from USAC, Schools and Libraries Division, to Sharron Bills, Dimmitt Independent School District (dated Sept. 15, 2010) (regarding Dimmitt FY 2009 FCC Form 471 application number 663273); Letter from USAC, Schools and Libraries Division, to Virginia Bryant, Trillion Partners, Inc. (dated Nov. 23, 2010) (regarding various FCC Form 471 applications, including Dimmitt FY 2010 FCC Form 471 application number 733584).

¹⁶ See Dimmitt Independent School District's Request for Review of USAC's Denial of E-rate Funding and Brief in Support, CC Docket Nos. 96-45 and 02-6 (filed Apr. 7, 2011) (regarding Dimmitt FY 2008 FCC Form 471 application number 619342) (Dimmitt FY 2008 Request for Review); Dimmitt Independent School District's Request for Review of USAC's Denial of E-rate Funding and Brief in Support, CC Docket Nos. 96-45 and 02-6 (filed Oct. 18, 2010) (regarding Dimmitt FY 2009 FCC Form 471 application number 663273) (Dimmitt FY 2009 Request for Review); Dimmitt Independent School District's Request for Review of USAC's Denial of E-rate Funding and Brief in Support, CC Docket Nos. 96-45 and 02-6 (filed Jan. 21, 2011) (regarding Dimmitt FY 2010 FCC Form 471 application number 733584) (Dimmitt FY 2010 Request for Review) (collectively, Dimmitt Requests for Review). Trillion also filed appeals related to Dimmitt's applications. See appendix. Trillion generally argues that all gifts provided to the applicant were in full compliance with all applicable competitive bidding and procurement requirements at the time. See also Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 3, 2010) (Trillion Master Appeal Summary).

4. East Central BOCES Request for Review. East Central BOCES submitted its FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services on January 19, 2006 and December 22, 2006, respectively.¹⁷ Subsequently, East Central BOCES entered into contracts with its selected service provider, Trillion, and filed its FCC Form 471 applications for funding years 2006 through 2010.¹⁸ USAC denied East Central BOCES's applications on the ground that East Central BOCES violated the Commission's competitive bidding rules because several of its employees allegedly accepted meals and gift cards from Trillion totaling approximately \$230 between 2004 and 2006.¹⁹ East Central BOCES then filed the instant request for review and supplement with the Commission arguing that it did not receive some of the alleged gifts, and the gifts it received did not taint the competitive bidding process.²⁰ Specifically, East Central BOCES argues that the Commission had no specific gift rules at the time, and the gifts were either well within the state guidelines for receipt of gifts, were received after the completion of the competitive bidding process, or were received by employees that had no authority or influence over the competitive bidding process.²¹

5. Specifically, the gifts at issue included a lunch valued at \$8.61 in October 2004, a breakfast valued at \$9.97 in July 2005, a breakfast valued at \$6.98 in July 2006, and a lunch valued at \$8.27 in December 2006.²² East Central states that these meals were for insignificant amounts and were provided to employees with no authority or influence over East Central BOCES's E-rate procurement process.²³ In

¹⁷ See FCC Form 470, East Central BOCES (posted Jan. 19, 2006); FCC Form 470, East Central BOCES (posted Dec. 22, 2006).

¹⁸ See FCC Form 471, East Central BOCES (filed Feb. 16, 2006) (East Central BOCES FY 2006 FCC Form 471 application number 520538); FCC Form 471, East Central BOCES (filed Feb. 5, 2007) (East Central BOCES FY 2007 FCC Form 471 application number 552505); FCC Form 471, East Central BOCES (filed Feb. 7, 2007) (East Central BOCES FY 2007 FCC Form 471 application number 550941); FCC Form 471, East Central BOCES (filed Feb. 4, 2008) (East Central BOCES FY 2008 FCC Form 471 application number 597967); FCC Form 471, East Central BOCES (filed Feb. 4, 2008) (East Central BOCES FY 2008 FCC Form 471 application number 597974); FCC Form 471, East Central BOCES (filed Jan. 14, 2009) (East Central BOCES FY 2009 FCC Form 471 application number 653350); FCC Form 471, East Central BOCES (filed Jan. 14, 2009) (East Central BOCES FY 2009 FCC Form 471 application number 653357); FCC Form 471, East Central BOCES (filed Feb. 16, 2010) (East Central BOCES FY 2010 FCC Form 471 application number 728369); and FCC Form 471, East Central BOCES (filed Feb. 17, 2010) (East Central BOCES FY 2010 FCC Form 471 application number 728350).

¹⁹ See Letter from USAC, Schools and Libraries Division, to Dale Kanack, East Central BOCES (dated Oct. 6, 2010) (USAC October 6 Letter) (regarding East Central BOCES's FYs 2009 and 2010 FCC Form 471 application numbers 653350, 653357, 728350, and 728369); Letter from USAC, Schools and Libraries Division, to Jarred Masterson, East Central BOCES (dated Oct. 19, 2010) (USAC October 19 Letter) (regarding East Central BOCES's FYs 2006, 2007, and 2008 FCC Form 471 application numbers 520538, 550941, 552505, 597967, and 597974).

²⁰ See Letter from Floyd E. Beard, East Central BOCES, to Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 1, 2010) (East Central BOCES Request for Review); Letter from Floyd E. Beard, East Central BOCES, to Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 17, 2010) (East Central BOCES Supplement). Trillion also filed appeals related to East Central BOCES's applications. See appendix. Trillion generally argues that all gifts provided to the applicant were in full compliance with all applicable competitive bidding and procurement requirements at the time. See Trillion Master Appeal Summary.

²¹ See East Central BOCES Request for Review; East Central BOCES Supplement.

²² See East Central BOCES Request for Review at 5-7; East Central BOCES Supplement at 2-8.

²³ See East Central BOCES Request for Review at 8; East Central BOCES Supplement at 2-8; Letter from Les Miller, Dimmitt Independent School District, Floyd Beard, East Central BOCES, Henry Rivera, Counsel for Receiver for Trillion Partners, Inc., to Secretary, Federal Communications Commission, CC Docket No. 02-6, at 35 (filed Sept. 30, 2011).

addition, USAC's intent to deny letter referred to gifts of a \$50 restaurant gift card in November 2005, \$10 Starbucks gift cards totaling \$100 in July 2006, and two Target gift cards in the amount of \$25 each.²⁴ East Central BOCES claims that the restaurant gift card was not received, one Target gift card was not received and the other was returned, and the Starbucks gift cards, given to 10 different people, were never used because the nearest Starbucks was an hour and a half away.²⁵

6. Finally, in July 2006, one of East Central BOCES's employees attended a conference on education technology sponsored by Trillion for its existing customers.²⁶ The travel expenses totaled approximately \$450. East Central BOCES argues that the payment of the travel expenses for the conference could not have influenced the competitive bidding process because the employee who attended the event was hired five months after the completion of the competitive bidding process and attended the conference six months after East Central BOCES filed its FCC Form 471 application.²⁷

7. Houston Requests for Review. Houston submitted its FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services on October 29, 2003, November 7, 2007, and November 3, 2008, respectively.²⁸ Subsequently, Houston entered into contracts with its selected service provider, Trillion, and filed its FCC Form 471 applications for FYs 2009 and 2010.²⁹ USAC denied Houston's applications on the ground that Houston violated the Commission's competitive bidding rules because four of its employees accepted meals from Trillion totaling approximately \$200 between 2007 and 2009.³⁰ More specifically, the gifts included, meals valued at \$20.66 per person for two employees in 2007, meals valued at approximately \$25 per person for two employees in 2008, a meal valued at \$26.34 for one employee and meals valued at approximately \$35 per person for three employees in 2009.³¹ Houston then filed the instant requests for review with the Commission arguing that the meals complied with the state's

²⁴ USAC's "Intent to Deny" Letter, dated October 6, informed East Central BOCES that USAC planned to deny the consortium's funding request unless it provided further information about the allegations that would result in USAC reaching a different conclusion. *See* USAC October 6 Letter. That letter contained these details about the alleged gifts. However, USAC's actual denial letter did not provide specific details for the basis of the denial and so East Central BOCES relied on the October 6 letter in responding to the allegations. *See* USAC October 19 Letter; East Central BOCES Request for Review at 5-7; East Central BOCES Supplement at 2-8.

²⁵ *See* East Central BOCES Request for Review at 5-7; East Central BOCES Supplement at 2-8.

²⁶ *See* East Central BOCES Request for Review at 6; East Central BOCES Supplement 7-8.

²⁷ *See* East Central BOCES Supplement 7.

²⁸ *See* FCC Form 470, Houston County Board of Education (posted Oct. 29, 2003); FCC Form 470, Houston County Board of Education (posted Nov. 7, 2007); FCC Form 470, Houston County Board of Education (posted Nov. 3, 2008).

²⁹ *See* FCC Form 471, Houston County Board of Education (filed Feb. 2, 2009) (regarding Houston FY 2009 application number 650947); FCC Form 471, Houston County Board of Education (filed Jan. 29, 2010) (regarding Houston FY 2010 FCC Form 471 application number 722005).

³⁰ *See* Letter from USAC, Schools and Libraries Division, to Bob Blalock, Houston County Schools (dated Sept. 16, 2010) (regarding application number 650947) (USAC September Letter to Houston); Letter from USAC, Schools and Libraries Division, to Bob Blalock, Houston County Schools (dated Oct. 6, 2010) (regarding application number 722005) (USAC October Letter to Houston).

³¹ *See* USAC September Letter to Houston; USAC October Letter to Houston.

gift restrictions, and there were no other inappropriate conversations, exchange of information, or inappropriate relationships identified by USAC that impeded a fair and open competitive bidding process.³²

8. Trillion Requests for Review Regarding Espanola's Applications. In 2006, Espanola signed a five-year contract with Trillion to provide wide area network (WAN) service from 2006-2010.³³ In 2008, Espanola submitted an FCC Form 470 to USAC for telecommunications services.³⁴ Trillion was the only service provider to respond to Espanola's request for telecommunications services.³⁵ Espanola and Trillion subsequently entered into an amended five-year contract covering FYs 2008-2012, after which Espanola filed its FCC Form 471 application for FY 2008 with USAC.³⁶ In August 2008, USAC approved Espanola's application for FY 2008.³⁷ Espanola later filed its FCC Form 471 applications for FYs 2009 and 2010 with USAC.³⁸

9. In September 2010, USAC reevaluated Espanola's competitive bidding procedures and denied its applications for FYs 2009 and 2010.³⁹ USAC found that Espanola violated the Commission's competitive bidding rules by permitting its staff members to accept four meals from Trillion during FYs 2006 and 2007 totaling \$85.88.⁴⁰ In response, Espanola sent a letter to USAC arguing that the acceptance of such gifts by its staff members neither violated New Mexico's procurement code nor compromised Espanola's competitive bidding process because all of the bidders knew the requirements and were all

³² See Letter from Robert Blalock, Houston County Schools, to Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 02-6 (filed Nov. 16, 2010) (regarding Houston's FY 2009 FCC Form 471 application number 650947 and FY 2010 FCC Form 471 application number 722005); Letter from Robert Blalock, Houston County Schools, to Secretary, Federal Communications Commission, CC Docket Nos. 96-45 and 02-6 (filed Mar. 23, 2011) (regarding Houston's FY 2008 FCC Form 471 application number 594485) (collectively, Houston Requests for Review). Trillion also filed appeals related to Houston's applications. See appendix. Trillion generally argues that all gifts provided to the applicant were in full compliance with all applicable competitive bidding and procurement requirements at the time. See Trillion Master Appeal Summary.

³³ See Trillion Partners, Inc., Services Agreement (signed Feb. 16, 2006) (2006 Trillion Contract) (total service charge of \$209,316.00).

³⁴ See FCC Form 470, Espanola Public School District (posted Jan. 4, 2008).

³⁵ See Email from Leah Frazier, Espanola Public School District to USAC, at attachment (Bids Received Worksheet) (dated July 1, 2008).

³⁶ See Trillion Partners, Inc., Services Agreement (signed Feb. 7, 2008) (lowering the total service charge for the WAN from \$209,316.00 to \$172,656.00); FCC Form 471, Espanola Public School District (filed Feb. 7, 2008) (regarding Espanola's FY 2008 application number 630113).

³⁷ See Letter from USAC, Schools and Libraries Division, to Scott Smyth, Trillion Partners, Inc. (dated Aug. 5, 2008) (regarding Espanola's FY 2008 FCC Form 471 application number 630113, FRN 1751204) (Espanola FY 2008 FCDL).

³⁸ See Espanola FY 2009 FCC Form 471 application number 695540, FRN 1911792; Espanola FY 2010 FCC Form 471 application number 762481, FRN 2059880.

³⁹ See Letter from USAC, Schools and Libraries Division, to Leah Frazier, Espanola Public School District (dated Sept. 29, 2010) (regarding Espanola's FY 2009 FCC Form 471 application number 695540, FRN 1911792) (Espanola FY 2009 FCDL); Letter from USAC, Schools and Libraries Division, to Leah Frazier, Espanola Public School District (dated Sept. 28, 2010) (regarding Espanola's FY 2010 FCC Form 471 application number 762481, FRN 2059880) (Espanola FY 2010 FCDL).

⁴⁰ See Espanola FY 2009 FCDL at 5; Espanola FY 2010 FCDL at 3.

given equal treatment.⁴¹ Subsequently, in October 2010, USAC issued a commitment adjustment letter rescinding its funding commitment for Espanola's FY 2008 application because Espanola's staff members accepted the four meals.⁴² In November 2010, Espanola filed an appeal with USAC of its decision denying Espanola's FY 2010 application.⁴³ Subsequently, Trillion filed the instant appeals with the Commission concerning Espanola's FYs 2008, 2009, and 2010 applications.⁴⁴ Specifically, Trillion argues that the meals provided to members of Espanola's staff were trivial and were given in compliance with federal, state, and local laws.⁴⁵ Finally, in December 2010, USAC affirmed its denial of Espanola's FY 2010 application.⁴⁶

III. DISCUSSION

10. We grant these appeals. Based on our review of the record, we find that the applicants selected Trillion in accordance with the Commission's E-rate competitive bidding rules that existed at the time.⁴⁷ As an initial matter, we note that, in the September 2010 *Schools and Libraries Sixth Report and Order*, the Commission amended section 54.503 of the Commission's E-rate program rules and adopted gift rules consistent with the gift rules applicable to federal agencies to establish more specific standards and guidance to implement the general requirement that all program participants conduct a fair and open competitive bidding process.⁴⁸ The Commission adopted specific gift rules that became effective January

⁴¹ See Letter from Leah Frazier, Espanola Public School District, to USAC, Schools and Libraries Division (dated Sept. 15, 2010) (arguing that Espanola's FY 2008-10 FCC Form 471 applications should not have been denied). The record does not show any response from USAC to Espanola to this letter.

⁴² See Letter from USAC, Schools and Libraries Division, to Leah Frazier, Espanola Public School District (dated Oct. 20, 2010) (regarding Espanola's FY 2008 FCC Form 471 application number 630113, FRN 1751204) (Espanola FY 2008 Commitment Adjustment Letter).

⁴³ See Letter from Leah Frazier, Espanola Public School District, to USAC, Schools and Libraries Division (dated Nov. 24, 2010).

⁴⁴ See Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 11, 2011) (regarding Espanola FY 2008 FCC Form 471 application number 630113, funding request number (FRN) 1751204); Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 11, 2011) (regarding Espanola FY 2009 FCC Form 471 application number 695540, FRN 1911792); Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 11, 2011) (regarding Espanola FY 2010 FCC Form 471 application number 762481, FRN 2059880) (collectively, Trillion Appeals). See also Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 3, 2010) (Trillion Master Appeal Summary).

⁴⁵ See Trillion Appeals at 1.

⁴⁶ See Letter from USAC, Schools and Libraries Division, to Leah Frazier, Espanola Public School District (dated Dec. 16, 2010).

⁴⁷ See 47 C.F.R. § 54.504 (2006) as amended by 47 C.F.R. § 54.503 (2011).

⁴⁸ See 47 C.F.R. § 54.503(d); *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18800-02, paras. 87-90. "Generally, the federal rules prohibit a federal employee from directly or indirectly soliciting or accepting a gift (*i.e.* anything of value) from someone who does business with his or her agency or accepting a gift given as a result of the employee's official position." *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. The federal rules permit two exceptions, categorized as *de minimis* gifts, essentially: (1) modest refreshments that are not offered as part of a meal and items with little intrinsic value intended for presentation, and (2) items that are worth \$20 or less as long as those items do not exceed \$50 per employee from any one source per calendar year. *Id.* Similarly, the Commission amended section 54.503 to prohibit E-rate applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the E-rate program. *Id.*

3, 2011.⁴⁹ The gifts at issue in these appeals were provided long before January 3, 2011. We thus find that the Commission's current gift rules are not applicable to the instant matters because the rules became effective after the completion of the applicants' competitive bidding processes.⁵⁰ Instead, we review USAC's denials and recovery actions of the instant applications by determining whether the gifts impeded a fair and open competitive bidding process.⁵¹

11. In all four instances, USAC found that the applicants violated the Commission's competitive bidding rules because they accepted gifts, in the form of meals, gift cards, or gift certificates, from Trillion. As the Commission has observed, competitive bidding is vital to limiting waste and assisting schools and libraries in receiving the best value for their limited funds.⁵² Because of the importance of the competitive bidding process to the program, the Commission has consistently required that it be fair and open, and that no bidders receive an unfair advantage.⁵³ The process cannot be compromised through improper conduct by the applicant, service provider, or both parties.⁵⁴

12. We find that the gifts at issue here did not, by themselves, compromise the competitive bidding process.⁵⁵ In each instance, the gifts were minimal, they were provided over the course of several years, or they were given to employees with no authority to bind the district to a contract or who had no ability to influence the competitive bidding decision. Except for the conference travel expenses provided to the employee of East Central BOCES, the largest single gift was approximately \$50, and most were under \$35. Specifically, in the cases of East Central BOCES, Houston, and Espanola, these small gifts were received by the applicants' employees over the course of multiple funding years, and, in several cases, by employees that had no authority or influence over the competitive bidding process.⁵⁶ In the case of

Additionally, the Commission's rule accounts for gifts given within the funding year, rather than the calendar year. *See id.* at 18819.

⁴⁹ *See Wireline Competition Bureau Provides Guidance Following Schools and Libraries Universal Service Support Program Sixth Report and Order*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, 25 FCC Rcd 17332, 17333 (Wireline Comp. Bur. 2010).

⁵⁰ We note, however, that at least several of these gifts would be acceptable under the Commission's current rules. *See, e.g.*, meals provided to East Central BOCES's employees totaling approximately \$34.00 between October 2004 and December 2006. *See* East Central BOCES Request for Review at 5-7; East Central BOCES Supplement at 2-8.

⁵¹ *See* 47 C.F.R. §§ 54.504(b)-(c); *supra* n.7.

⁵² *See Federal-State Joint Board on Universal Service*, CC Docket No.96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) (subsequent history omitted); *see also Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that the competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates.).

⁵³ *See supra* para. 2.

⁵⁴ *Id.*

⁵⁵ *See supra* paras. 3-5. It is possible to have small gifts that, where coupled with other improper behavior, contribute to impairment of a fair and open competitive bidding process.

⁵⁶ *See* East Central BOCES Request for Review; East Central BOCES Supplement; Houston Requests for Review; Trillion Appeals.

Dimmitt, the meals were given to three of its district employees at a cost of less than \$35 per person in a funding year.⁵⁷ Further, none of Dimmitt's employees receiving the gifts had input or influence over the school's decision to select Trillion as their service provider.⁵⁸

13. With respect to the gift of conference travel expenses to the East Central BOCES employee, we find it did not compromise the competitive bidding process because the employee that received it was not employed by the school district during the competitive bidding process, and it was given to the employee several months after the completion of the competitive bidding process. In addition, the conference was designed to gather current Trillion customers to discuss technology issues for the benefit of their schools; it did not include leisure activities for the individual attendees that were not business-related.⁵⁹

14. Finally, no evidence of waste, fraud or abuse, or misuse of funds is in the record at this time. We therefore grant these appeals. We direct USAC to issue or revise the applicants' funding commitments based on this decision. Where applicable, USAC should discontinue recovery actions against the petitioners. We emphasize, however, our analysis of these instances would be different under our current rules, because the Commission established clear guidelines on permissible gifts in the *Schools and Libraries Sixth Report and Order*, which became effective on January 3, 2011.⁶⁰

IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and the authority delegated pursuant to authority in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the requests for review filed by Dimmitt Independent School District, East Central Board of Cooperative Educational Services, and Houston County Schools, and Trillion Partners, Inc. ARE GRANTED to the extent provided herein.

16. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that USAC SHALL COMPLETE its review of each remanded application and ISSUE an award or a denial based on a complete review and analysis consistent with this order no later than 60 calendar days from the release date of this order.

⁵⁷ See Dimmitt Requests for Review.

⁵⁸ *Id.*

⁵⁹ See Letter from Kevin Bethke, Trillion Partners, Inc., to Gaurangi Shah, USAC, Schools and Libraries Division, and Gina Spade, Federal Communications Commission, WC Docket No. 02-6, at 4 (dated July 8, 2010); Letter from Kevin Bethke, Trillion Partners, Inc., to Secretary, Federal Communications Commission, WC Docket No. 02-6, at 1-2 (filed Oct. 11, 2011).

⁶⁰ See 47 C.F.R. § 54.503(d); *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, 75 Fed. Reg. 75393 (Dec. 3, 2010).

17. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, that USAC SHALL issue or revise the funding commitment decision letters for the underlying applications and associated FRNs listed in the appendix, and, where necessary, discontinue its recovery actions.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Petitioners	Funding Years	Application Numbers	Funding Request Numbers	Date of Appeals
Dimmit Independent School District Dimmitt, TX	2008	619342	1705900	Apr. 7, 2011
	2009	663273	1811096	Oct. 18, 2010
	2010	733584	1983786	Jan. 21, 2011
East Central Board of Cooperative Educational Services Limon, CO	2006	520538	1482638	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2007	550941	1555019	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2007	552505	1536942	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2008	597967	1699625	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2008	597974	1699536	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2009	653350	1804812	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2009	653357	1804971	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2010	728369	2058334	Dec. 1, 2010, Dec. 17, 2010 (supp.)
	2010	728350	2060457	Dec. 1, 2010, Dec. 17, 2010 (supp.)
Houston County Schools Dothan, AL	2008	594485	1641399,1641402	Mar. 23, 2011
	2009	650947	1786824, 1786841	Nov. 16, 2010
	2010	722005	1957944, 1957954	Nov. 16, 2010
Trillion Partners, Inc. Austin, TX	2006	520538	1482638	Nov. 12, 2010
	2007	550941	1555019	Nov. 12, 2010
	2007	552505	1536942	Nov. 12, 2010
	2008	594485	1641399,1641402	Mar. 9, 2011
	2008	630113	1751204	Nov. 11, 2010
	2009	695540	1911792	Nov. 11, 2010
	2009	597967	1699625	Nov. 12, 2010
	2009	597974	1699536	Nov. 12, 2010
	2009	619342	1705900	Mar. 9, 2011
	2009	650947	1786824, 1786841	Nov. 9, 2010
	2009	653350	1804812	Nov. 12, 2010
	2009	653357	1804971	Nov. 12, 2010
	2010	663273	1811096	June 20, 2010, Oct. 1, 2010
	2010	762481	2059880	Nov. 11, 2010
	2010	722005	1957944, 1957954	Nov. 9, 2010
	2010	728369	2058334	Nov. 12, 2010
	2010	728350	2060457	Nov. 12, 2010
	2010	733584	1983786	Dec. 9, 2010