

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Requests for Review of
Decisions of the
Universal Service Administrator by
Marana Unified School District
Marana, Arizona
Trillion Partners, Inc.
Austin, Texas
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-531607, et al.
File No. SLD-611726
CC Docket No. 02-6

ORDER

Adopted: February 15, 2012

Released: February 15, 2012

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

I. INTRODUCTION

1. In this order, we deny appeals of decisions by the Universal Service Administrative Company (USAC) filed by the Marana Unified School District (Marana) and its service provider, Trillion Partners, Inc. (Trillion), rescinding Marana’s funding commitments and seeking recovery of funding already disbursed under the E-rate program (more formally known as the schools and libraries universal service support program) for funding years 2006-2010.1 Specifically, USAC rescinded funding for 12 of Marana’s funding requests as part of its funding year 2006, 2007, and 2008 applications and sought recovery for funding already disbursed for funding years 2007 and 2008 on the ground that Marana violated the Commission’s competitive bidding requirements.2 For the same reasons, USAC also denied

1 See appendix. In this order, we use the term “appeals” to generically refer to requests for review of decisions issued by USAC. 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).

2 See Letter from USAC, Schools and Libraries Division, to Dan Hunt, Marana Unified School District (dated Jan. 28, 2011) (regarding funding year (FY) 2006 FCC Form 471 application 531607, funding request numbers (FRN) 1468437, 1468735, 1468603, and 1469006); Letter from USAC, Schools and Libraries Division, to Dan Hunt, Marana Unified School District (dated Jan. 28, 2011) (regarding FY 2007 FCC Form 471 application 569965, FRNs 1573238, 1587171, 1587223, and 1587335); Letter from USAC, Schools and Libraries Division, to Mitchell Eichenseer, Marana Unified School District (dated Jan. 28, 2011) (regarding FY 2008 FCC Form 471 application 611726, FRNs 1731902, 1731952, 1731993, and 1732011) (collectively, Notification of Commitment Adjustment Letters (COMADs)). See also infra n.20.

funding for nine of Marana's funding requests as part of its funding year 2009 and 2010 applications.³ Upon review of the record, we find that Marana violated the Commission's competitive bidding requirements. We therefore deny Marana's and Trillion's appeals and affirm USAC's decisions. We direct USAC to continue recovery actions against Marana and its service provider, Trillion, consistent with this order.

II. BACKGROUND

2. *E-rate Program Rules and Requirements.* Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services.⁴ The Commission's rules provide that these entities must seek competitive bids for all services eligible for support.⁵ 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.⁶ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.⁷ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a request for proposal (RFP) available providing detail about the requested services.⁸ The RFP must be available to all potential bidders for the duration of the bidding process.⁹

3. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹⁰ The applicant must consider all submitted bids prior to entering into a contract, and price must be the primary factor in selecting the winning bid.¹¹ Once the applicant has selected a provider and entered into a service contract, the applicant must file an FCC Form

³ See Letter from USAC, Schools and Libraries Division, to Mitchell Eichenseer, Marana Unified School District (dated Nov. 3, 2010) (regarding FY 2009 FCC Form 471 application 661850, FRNs 1867259, 1867293, 1867213, 1867329, and 190756); Letter from USAC, Schools and Libraries Division, to Mitchell Eichenseer, Marana Unified School District (dated Oct. 12, 2010) (regarding FY 2010 FCC Form 471 application 743075, FRNs 2006044, 2006074, 2006105, and 2006140) (collectively, FY 2009 and 2010 Funding Commitment Decision Letters (FCDLs)).

⁴ 47 C.F.R. §§ 54.501-54.502.

⁵ 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).

⁶ 47 C.F.R. § 54.503(c).

⁷ *Id.*

⁸ See, e.g., Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (October 2004) (current FCC Form 470).

⁹ See FCC Form 470.

¹⁰ 47 C.F.R. § 54.503(c). 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).

¹¹ 47 C.F.R. § 54.511(a).

471 requesting support for eligible services.¹² USAC assigns 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.¹³

4. The Commission has consistently stated that the competitive bidding process must be fair and open and must not have been compromised because of improper conduct by the applicant, service provider, or both parties.¹⁴ Under the Commission's rules, a service provider participating in the competitive bidding process cannot be involved in the preparation of the entity's technology plan, FCC Form 470 or RFP.¹⁵ In addition, 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.¹⁶

5. *Requests for Review.* In 2006 and 2009, Marana submitted its FCC Forms 470 to USAC to initiate the competitive bidding process for E-rate eligible services for funding years 2006-2010.¹⁷

¹² See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (current FCC Form 471).

¹³ See USAC website, Schools and Libraries, Funding Commitment Decision Letter, available at <http://www.universalservice.org/sl/applicants/step09/funding-commitment-decision-letter.aspx> (last visited Feb. 13, 2012).

¹⁴ See, e.g., *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 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); *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) (noting that an applicant impairs its ability to hold a fair and open competitive bidding process when the applicant's FCC Form 470 contact person is also a service provider participating in the bidding process as a bidder); *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 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.

¹⁵ See *Mastermind Order*, 16 FCC Rcd at 4033 (2000) (stating that when an applicant allows an entity that also participates in the competitive bidding process as a prospective service provider to serve in that role, the applicant impairs its ability to hold a fair and open competitive bidding process.)

¹⁶ See *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003) (*Ysleta Order*); *Mastermind Order*, 16 FCC Rcd 4028. See also *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18799.

¹⁷ FCC Form 470, Marana Unified School District (posted Jan. 15, 2006) (FCC Form 470 number 383590000578149) (seeking a multi-year contract for wireless wide area network (WAN)); FCC Form 470, Marana School District (posted Jan. 13, 2009) (FCC Form 470 number 179590000724691) (seeking bandwidth and service level upgrades to existing wireless WAN). FCC Form 470 number 383590000578149 was the establishing FCC (continued...)

Subsequently, Marana entered into service contracts with Trillion and filed its FCC Form 471 applications for funding years 2006-2010.¹⁸ USAC approved the funding requests at issue in Marana's funding year 2006, 2007, and 2008 applications.¹⁹ During post-funding review, however, USAC rescinded Marana's funding commitments for these requests after determining that Marana did not conduct a competitive bidding process that was free from conflicts of interest.²⁰ Specifically, USAC concluded that Marana and Trillion engaged in meetings, e-mail discussions, and verbal discussions prior to the posting of Marana's funding year 2006 FCC Form 470 and throughout the competitive bidding process.²¹ In addition, USAC concluded that Marana's funding year 2006 competitive bidding process was compromised because Trillion assisted Marana in developing service specifications for Marana's FCC Form 470 and corresponding RFP.²² USAC later denied Marana's funding year 2009 and 2010 applications for the same reasons because the FRNs at issue in those applications were service upgrades arising out of the original contract executed pursuant to the funding year 2006 competitive bidding process.²³ Marana then filed the instant requests for review with the Commission.²⁴

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Form 470 for all but two of Marana's funding requests at issue. FCC Form 470 number 179590000724691 was the establishing FCC Form 470 for FRN 1907563 as part of Marana's funding year 2009 application and FRN 2006140 as part of Marana's funding year 2010 application. *Id.*

¹⁸ FCC Form 471, Marana Unified School District (filed Feb. 16, 2006) (FY 2006 FCC Form 471 application number 531607); FCC Form 471, Marana Unified School District (filed Feb. 8, 2007) (FY 2007 FCC Form 471 application number 569965); FCC Form 471, Marana Unified School District (filed Feb. 7, 2008) (FY 2008 FCC Form 471 application number 611726); FCC Form 471, Marana Unified School District (filed Feb. 12, 2009) (FY 2009 FCC Form 471 application number 661850); FCC Form 471, Marana Unified School District (filed Feb. 3, 2010) (FY 2010 FCC Form 471 application number 743075). Marana and Trillion signed a five-year contract for a wireless WAN on February 16, 2006. *See* Marana Request for Review. In funding year 2009, Marana posted FCC Form 470 number 179590000724691 seeking upgrades to the existing wireless WAN. *See* FCC Form 470 number 179590000724691. On February 9, 2009, Marana and Trillion amended the existing wireless WAN contract to include bandwidth and service level upgrades. Marana's funding year 2009 and 2010 FCC Form 471 applications sought funding for these upgrades in FRNs 1907563 and 2006140, respectively. *See* FY 2009 FCC Form 471 application number 661850; FY 2010 FCC Form 471 application number 743075.

¹⁹ *See* Marana Requests for Review.

²⁰ *See* COMADs. Specifically, USAC rescinded its funding commitments for FRNs 1468437, 1468735, 1468603, and 1469006 as part of Marana's funding year 2006 application; FRNs 1573238, 1587171, 1587223, and 1587335 as part of Marana's funding year 2007 application; and FRNs 1731902, 1731952, 1731993, and 1732011 as part of Marana's funding year 2008 application. *See* Marana Requests for Review. With regard to Marana's funding year 2006 application, no funds have been disbursed, and thus no recovery of funds is being sought. As for Marana's funding year 2007 and 2008 applications, funding has been disbursed, and USAC has initiated recovery actions. *Id.*

²¹ *See* COMADs.

²² *Id.*

²³ *See* FY 2009 and 2010 FCDLs.

²⁴ *See* Marana Requests for Review. Trillion also filed appeals related to Marana's applications. *See* appendix. Trillion generally argues that Marana's competitive bidding process did not violate Commission rules. *See also* Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Nov. 3, 2010); Letter from Trillion Partners, Inc., to Federal Communications Commission, CC Docket No. 02-6 (filed Dec. 9, 2010).

6. In its requests for review, Marana states that it had been meeting with various wide area network and voice service providers for months prior to posting its initial FCC Form 470 number 383590000578149 in funding year 2006 and releasing its corresponding RFP to determine what types of services were available and would best meet Marana's needs.²⁵ After receiving five proposals in response to its initial FCC Form 470 and the corresponding RFP, Marana states that its eight-member selection committee reviewed the proposals based upon seven evaluation criteria and the point system set forth in the RFP.²⁶ Three proposals were deemed unresponsive because they included either WAN or telecommunications services, but not both.²⁷ Of the two remaining proposals, Marana states that it selected Trillion because it received the highest number of points in the vendor selection process, and it offered the lowest price.²⁸

7. According to Marana, its contact with Trillion before and throughout the competitive bidding process did not result in Trillion having inside information or information that was unavailable to other service providers.²⁹ Marana also argues that it was in control of all aspects of the bidding process, including the dissemination of information, and that Trillion did not have any role in the preparation of its FCC Forms 470 or RFP.³⁰ Further, Marana maintains that none of its employees had any ownership or employment interest in Trillion or any other potential service provider at the time the FCC Forms 470 and RFP were issued.³¹ Marana states that the award of the contract to Trillion was in compliance with Arizona procurement laws and was based upon evaluation of the proposals submitted by competing vendors in accordance with the criteria set forth in the RFP.³²

III. DISCUSSION

8. Based upon our review of the record, we deny Marana's and Trillion's appeals. We conclude that Marana violated the Commission's competitive bidding rules during its funding year 2006 competitive bidding process by failing to conduct a fair and open competitive bidding process.³³ Marana provided information that gave Trillion an unfair advantage over other potential bidders and essentially selected Trillion as its provider without waiting the full 28 days required by Commission rules.³⁴ We also find that Trillion assisted Marana with the preparation of its funding year 2006 FCC Form 470 and with

²⁵ Marana Request for Review at 1.

²⁶ *Id.* at Exhibit J (listing the following seven criteria and corresponding point allocation: (1) total price- 300 points; (2) service level agreement- 200 points; (3) example project- 100 points; (4) customer references- 100 points; (5) vendor summary- 100 points; (6) E-rate clauses- 100 points; and (7) scalability of solution- 100 points.)

²⁷ Marana Request for Review at 2.

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3.

³⁰ *Id.* at 3, 5.

³¹ *Id.* at 5.

³² *Id.* at 6.

³³ See 47 C.F.R. §§ 54.511, 54.723.

³⁴ See 47 C.F.R. § 54.503(c).

revisions to Marana's technology plan in preparation for Marana's funding year 2009 competitive bidding process in violation of program requirements.

9. 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.³⁵ 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.³⁶ That is, the process cannot be compromised by improper conduct by the applicant, service provider, or both parties.³⁷

10. The record before us demonstrates that Trillion improperly influenced Marana's competitive bidding process, that Marana had already decided to select Trillion as its service provider prior to posting its FCC Form 470 and RFP, and that Trillion received information outside of an open competitive bidding process, all in violation of program requirements.³⁸ Specifically, we find that in funding year 2006, Marana posted its FCC Form 470 on January 15, 2006, and released its RFP on January 18, 2006.³⁹ Prior to each posting, the record shows that Marana's director of technology, Mr. Dan Hunt, provided Trillion with information about the current needs of the school district and advised Trillion on what Trillion should include in its bid response.⁴⁰ The record also demonstrates that Marana and Trillion discussed other E-rate applicants' RFPs before Marana released its RFP, and that Trillion was working to obtain an RFP to give to Marana.⁴¹

³⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076, para. 480 (1997) (subsequent history omitted) (*Universal Service First Report and Order*). 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.).

³⁶ See *supra* para. 4.

³⁷ *Id.*

³⁸ See, e.g., *Mastermind Order*, 16 FCC Rcd 4028; *Ysleta Order*, 18 FCC Rcd 26407; *Schools and Libraries Third Report and Order*, 18 FCC Rcd 26939; *Approach Learning Order*, 22 FCC Rcd 5296.

³⁹ See FCC Form 470, Marana Unified School District (posted Jan. 15, 2006); Marana Unified School District Request for Proposal, Proposal Number "MUSD 06-020 E-rate WAN" (issued Feb. 13, 2006). The allowable contract date was February 15, 2006.

⁴⁰ See, e.g., E-mail from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Jan. 10, 2006) (stating "OK thanks Dan on the hub info. Would you like us to quote Internet bandwidth? If yes, how much? On your RFP item I will discuss with Roger and get back to you."); E-mail from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc. (dated Jan. 10, 2006) (stating "[p]resently we have a 6mb pole. It would be nice to get that to 10 in our next upgrade."); E-mail from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Jan. 10, 2006) (stating "[w]ould you like us to include in the WAN quote these managed services... firewall? Content Filtering? Email filtering?"); E-mail from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc. (dated Jan. 10, 2006) (stating "[p]resently I manage all of those things myself. However, it wouldn't hurt to have them in the quote with the option to pick them if I choose to use them.")

⁴¹ See E-mail from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc. (dated Jan. 11, 2006) ("Subject: lunch confirmation Tue 1/17..." stating "Do you know if Roger was getting that RFP from Kings (continued...)

11. In addition, the record shows that relevant personnel from Trillion and Marana engaged in routine and numerous contacts discussing all aspects of Marana's technology needs, the FCC Form 470 and Marana's RFP in violation of the Commission's competitive bidding requirements. As Marana's director of technology, Mr. Hunt engaged in numerous e-mail discussions, verbal discussions, and meetings with Trillion representatives prior to the posting of Marana's funding year 2006 FCC Form 470 and the release of Marana's RFP.⁴² For example, in an e-mail to Trillion's regional sales manager three months before Marana posted its FCC Form 470 and RFP, Mr. Hunt provided information about the sites Trillion should include in Trillion's preliminary WAN design.⁴³ The record also shows that Marana and Trillion scheduled a conference call to discuss Trillion's *final* WAN design, which was to take place one day before Marana released its RFP.⁴⁴ These contacts suggest that Trillion had completed its proposal with Marana's assistance or direction before Marana posted its FCC Form 470. In addition, Trillion assisted Marana in reviewing and revising Marana's FCC Form 470 and RFP, upon Mr. Hunt's request.⁴⁵

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Canyon California?"); Email from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Jan. 11, 2006) ("Subject: lunch confirmation Tue 1/17..." stating "Tuesday 11:30 am Cracker Barrel is fine, would be great if Dan C. could join us. I am working on Kings Canyon RFP for you."); Email from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc. (dated Jan. 11, 2006) ("Subject: lunch confirmation Tue 1/17..." stating "I have been researching them on line for hours. I have found quite a few WAN RFPs, but finding one that incorporates LAN and telecommunications has been tough. Thanks for everything."); Email from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Jan. 11, 2006) ("Subject: lunch confirmation Tue 1/17..." with link to RFP for Nederland School District).

⁴² See Letter from Pina Portanova, USAC, Schools and Libraries Division, to Mitch Eichenseer, Marana School District 6 (dated June 1, 2010).

⁴³ See E-mail from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Sept. 27, 2005) (stating "I am compiling your site list for your preliminary Trillion WAN design. Should I use these sites: <http://www.maranausd.org/schools.html>. You mentioned you may have sites with GPS. This would be helpful is available."); E-mail from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc. (dated Sept. 27, 2005) (stating "Those are the addresses of all of our sites. I have just been so swamped that I have not been able to get by the City of Marana to get the GPS coordinates off the map they had made of our sites. I will try to get there today. Estes Elementary, Marana Middle School, MCAT, ACE, and Marana Distance Learning are all on the District campus and are all connected via gigabit fiber. Desert Winds Elementary and Picture Rocks Intermediate sit on the same property, so maybe this would be a good place to feed one campus with wireless and connect the other one via fiber."); E-mail from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Nov. 3, 2005) (stating "Are you available to meet on Thursday 11/17 or mid PM at Marana to review your preliminary WAN site design?"); E-mail from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc. (dated Nov. 3, 2005) (stating "I am open from 10:30 to 4:30 on the 17th, so would be glad to sit down and go over the designs that day.");

⁴⁴ See E-mail from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Jan. 13, 2006) (stating "When you have a spare 5 minutes we need a quick conf call with my design mgr to discuss final design. Would Monday afternoon work?").

⁴⁵ See, e.g., E-mail from Gary Gaessler, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated Dec. 14, 2005) ("Subject: 470 and RFP"...stating "Roger [Trillion's vice president and general manager] has some creative thoughts/ideas he would like to share with Dan, Dennis [both school district employees] and yourself on similar past experiences... Sounds likes you could use some help with your erate filings, let me know if you would like E-rate consulting to contact you, they may also be of help for your prior year BEAR form filing follow-ups."); E-mail from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc. (dated Dec. 14, 2005) ("Subject: 470 and RFP"... stating "I could use some help on prior year stuff, so it would probably be helpful to speak with your erate consulting folks. I am not sure what wiggle room we have on the RFP no matter how creative we want to get. There have been major audit hits in AZ for districts that don't have the Board approve the RFP process in advance."); E-mail from Dan Hunt, Marana School District, to Gary Gaessler, Trillion Partners, Inc., (dated Jan. 15, (continued...))

When Marana ultimately posted its FCC Form 470 and RFP, it sought bids for the WAN discussed in these e-mails. Commission rules prohibit this type of coordination between an E-rate applicant and a service provider as well as such detailed and regular discussion about the proposal for which an applicant is planning to seek bids.⁴⁶

12. We also conclude that, for funding year 2009, Trillion assisted Marana in the preparation of its technology plan, in violation of program requirements.⁴⁷ As noted above, the Commission has determined that a person assisting in the preparation of a technology plan, FCC Form 470 or RFP can influence the products and services that should be requested.⁴⁸ When an applicant allows an entity that also participates in the competitive bidding process as a prospective service provider to serve in that role, the applicant impairs its ability to hold a fair and open competitive bidding process.⁴⁹ The record before us demonstrates a number of improper contacts between Marana and Trillion in funding year 2006. The coordination between Trillion and Marana became more egregious in 2008, however, when Marana's technology director took a job with Trillion and began working directly with Marana's new technology director on crafting Marana's 2009 technology plan.⁵⁰ Mr. Mitchell Eichenseer, the district's new technology director, expressly sought advice from Mr. Hunt, who was then employed by Trillion, on what Marana's technology plan should contain, including the level of bandwidth the school district would state that it needed and the method by which that service would be provided.⁵¹ Mr. Hunt then provided input to Mr. Eichenseer on what the technology plan should include.⁵² Mr. Eichenseer even stated that he hoped

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2006) (indicating that Mr. Hunt spoke with someone at Trillion: "I called and read what I had and asked for help in rewording what I had written. I think we are good.")

⁴⁶ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd 8776; *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939, para. 66; *Mastermind Order*, 16 FCC Rcd 4028.

⁴⁷ See *Mastermind Order*, 16 FCC Rcd at 4033 (2000).

⁴⁸ *Id.* at 4032-33.

⁴⁹ *Id.*

⁵⁰ In funding year 2008, Mr. Hunt left his position as the Director of Technology for the Marana School District and took a position as a Regional Manager for Trillion. See Email from Renaye Thornborrow, Trillion Partners, Inc., to Dan Hunt, Marana School District (dated May 13, 2008). Mr. Mitchell Eichenseer succeeded Mr. Hunt as Marana's new Director of Technology. See E-mail from Mitchell Eichenseer, Director of Technology, Marana School District, to Dan Hunt, Trillion Partners, Inc. (dated Nov. 26, 2008).

⁵¹ See E-mail from Mitchell Eichenseer, Director of Technology, Marana School District, to Dan Hunt, Trillion Partners, Inc. (dated Nov. 26, 2008) ("Subject: Section d of Technology Plan"... stating "Hey Dan, I know you're busy and all, but I was wondering if you could take a look at my revised version of "Section d. Describe the Infrastructure and Telecommunication needs." Towards the end of the first section (Present Network Infrastructure), things get a little grey for us here, in terms of the specifics of what we really have and how it's being used. A good example is what kind of internet connection do we have, the speed, and who it's from. It used to say that we had a 6 MB connection from Qwest, but from what I hear it's now a T3, but I'm not sure from whom. Also, the last paragraph may not be applicable anymore, but feel free to make changes wherever you see fit. If you don't have time, I'll totally understand. You've been a huge help to me already. I would also love your opinion on what kind of bandwidth we should be shooting for over the next three years from Trillion. Don't laugh when you read what I wrote. I'm aiming high, I suppose.").

⁵² See Email from Dan Hunt, Trillion Partners, Inc., to Mitchell Eichenseer, Marana School District (dated Dec. 1, 2008) ("Subject: Technology plan-Section d" with document attached.... stating "Mitch, Sorry this took so long. I made some comments in black and in red. I guess I should have been smart enough to turn on "track changes" but didn't think of it until I was done.").

Trillion would be able to provide the service.⁵³ In light of these contacts, we find that Marana violated the Commission's requirement that Marana conduct a fair and open competitive bidding process.

13. Based on the evidence before us, we find that Marana failed to hold a fair and open competitive bidding process for its initial contract with Trillion, ultimately affecting its funding year 2007 and 2008 applications. As such, we uphold USAC's decision to seek recovery of the funding for the 2007 and 2008 applications. In addition, the evidence demonstrates that Trillion assisted with revisions to Marana's technology plan prior to the posting of Marana's funding year 2009 FCC Form 470, impairing the integrity of the funding year 2009 competitive bidding process. We find that Marana's funding year 2009 and 2010 applications were based on the contract arising out of the funding year 2009 competitive bidding process. As such, we uphold USAC's decision to deny funding for Marana's funding year 2009 and 2010 applications.⁵⁴ Thus, based on the foregoing, we deny Marana's and Trillion's appeals and affirm USAC's decisions. We direct USAC to continue its recovery actions against Marana and Trillion.

IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS 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, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the requests for review filed by Marana Unified School District as listed in the appendix ARE DENIED.

15. 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, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 54.722(a), that the requests for review filed by Trillion Partners, Inc. as listed in the appendix ARE DENIED.

⁵³ See Email from Mitchell Eichenseer, Marana School District, to Dan Hunt, Trillion Partners, Inc. (dated Dec. 1, 2008) ("Subject: Technology plan-Section d"... stating "Dan, This is just what the doctor ordered. Thanks a lot! You added a great deal of clarity to the areas that I was really weak on. When I wrote about future bandwidth speeds for our 1) two high schools and 2) internet connection, I'll have to admit that I was arbitrarily picking numbers. After reviewing the Trillion website, I didn't see any breakdown in speed level, so I assumed that your company would offer a 250 Mbps level of bandwidth. As for the 100 Mbps internet connection, I'd be curious to know what your though is on achieving that level of service. Fiber? Maybe a T4 (274 Mbps), but not common, I think? I'd also be curious what provider (hopefully Trillion) can provide that level of service. Thanks again, Dan! I'm going to incorporate your comments into my master document now. Thanks! Mitch[.]")

⁵⁴ See *supra* para. 9.

16. IT IS FURTHER ORDERED, pursuant to authority contained in sections 1-4 and 254 of the Communications Act, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Universal Service Administrative Company SHALL CONTINUE recovery actions against Marana, and its service provider, Trillion Partners, Inc., for the funding requests identified in Marana's funding year 2007 and 2008 applications.

FEDERAL COMMUNICATIONS COMMISSION

Gina Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX

Petitioner	Funding Years	Application Numbers	Funding Request Numbers	Date of Appeals
Marana Unified School District Marana, Arizona	2006	531607	1468437	Dec. 9, 2010 Mar. 28, 2011 Apr. 12, 2011
			1468735	
			1468603	
			1469006	
	2007	569965	1573238	
			1587171	
			1587223	
			1587335	
	2008	611726	1731902	
			1731952	
			1731993	
			1732011	
	2009	661850	1867213	
			1867259	
			1867293	
			1867329	
2010	743075	1907563		
		2006044		
		2006074		
		2006105		
Trillion Partners, Inc. Austin, TX	2006	531607	1468437	Nov. 3, 2010, Dec. 9, 2010 Nov. 3, 2010, Dec. 9, 2010 Nov. 3, 2010, Dec. 9, 2010, Apr. 29, 2011 Nov. 3, 2010, Dec. 9, 2010 Nov. 13, 2010, Dec. 9, 2010
			1468735	
			1468603	
			1469006	
	2007	569965	1573238	
			1587171	
			1587223	
			1587335	
	2008	611726	1731902	
			1731952	
			1731993	
			1732011	
	2009	661850	1867213	
			1867259	
			1867293	
			1867329	
2010	743075	1907563		
		2006044		
		2006074		
		2006105		
			2006140	