

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Requests for Waiver and Review of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Callisburg Independent School District)	File Nos. SLD-446653, <i>et al.</i>
Callisburg, Texas)	
)	
Trillion Partners, Inc.)	File Nos. SLD-446653, <i>et al.</i>
Austin, Texas)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: February 23, 2012

Released: February 23, 2012

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

1. Consistent with precedent,¹ we grant two requests and deny two requests from Callisburg Independent School District and its service provider, Trillion Partners, Inc. (collectively, Petitioners) which seek review of decisions made by the Universal Service Administrative Company (USAC) under the E-rate program (more formally known as the schools and libraries universal service support program).² In each decision, USAC found violations of the Commission's competitive bidding requirements.³ Based on our review of the record, we find that for the applications listed in Appendix A,

¹ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Dimmitt Independent School District, et al.*, Order, 26 FCC Rcd 15581 (Wireline Comp. Bur. 2011). See also *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). 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. *Mastermind Order*, 16 FCC Rcd at 4033, para. 10. 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) (finding that service provider participation may have suppressed fair and open competitive bidding).

² 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).

³ See Appendices A-B.

the Petitioners complied with the Commission's competitive bidding requirements, and therefore we grant their requests. On our own motion, we also waive section 54.507(d) of the Commission's rules and any USAC procedural deadlines, such as the invoicing deadline, that might be necessary to effectuate our ruling.⁴ We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause petitioners to miss the program's subsequent procedural deadlines in that funding year.⁵

2. In addition, we deny the requests from the Petitioners for those applications listed in Appendix B. Based on our review of the record, we find that petitioners violated the Commission's competitive bidding requirements as to these applications. We also find that Petitioners have not demonstrated that good cause exists to justify a waiver of the Commission's competitive bidding requirements.⁶

3. We remand the underlying applications listed in Appendix A to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application listed and issue an award or a denial based on a complete review and analysis no later than 90 calendar days from the release date of this order. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the Petitioners' applications. We direct USAC to discontinue recovery actions against the Petitioners for those applications listed in Appendix A from which it is seeking recovery.

4. 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 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), the requests for review or requests for waiver filed by the Petitioners for the applications listed in Appendix A ARE GRANTED and their underlying applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.

5. 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 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), the requests for review or requests for waiver filed by the Petitioners for the applications listed in Appendix B ARE DENIED.

⁴ 47 C.F.R. § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

⁵ Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

⁶ See *supra* n.1.

6. 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 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 section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), IS WAIVED for the Petitioners' applications listed in Appendix A to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

APPENDIX A

APPEALS GRANTED

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Callisburg Independent School District Callisburg, TX	446653 598748	2005 2008	Apr. 4, 2011 Apr. 4, 2011
Trillion Partners, Inc. Austin, TX (Callisburg Independent School District Callisburg, TX)	446653 598748	2005 2008	Mar. 11, 2011 Mar. 11, 2011
Trillion Partners, Inc. Austin, TX (12 Applicants)			Oct. 1, 2010
Trillion Partners, Inc. (7 Applicants)			Oct. 10, 2010
Trillion Partners, Inc. (Master Appeal)			Nov. 3, 2010

APPENDIX B

APPEALS DENIED

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Callisburg Independent School District Callisburg, TX	662878 721400	2009 2010	Nov. 18, 2010 Nov. 18, 2010
Trillion Partners, Inc. Austin, TX (Callisburg Independent School District Callisburg, TX)	662878 721400	2009 2010	Nov. 18, 2010 Nov. 18, 2010
Trillion Partners, Inc.			Oct. 1, 2010
Trillion Partners, Inc. (Master Appeal)			Nov. 3, 2010