

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
Charlton County School System
Folkston, Georgia, et al.
Schools and Libraries Universal Service
Support Mechanism
File Nos. SLD-658765, et al.
CC Docket No. 02-6

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 deny seven requests from petitioners2 seeking 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).3 In each decision,

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). With respect to Bloomfield School District (Bloomfield) and Falcon School District 49 (Falcon), while USAC denied these applicants' funding requests due to receipt of gifts, we find that these applicants violated the Commission's competitive bidding violations by engaging in improper communications with their service provider, Trillion Partners, Inc. Because we deny Falcon's requests due to competitive bidding violations, we find moot Falcon's appeal of USAC's decision to lower its discount rate for funding year 2008. See Falcon School District, Request for Review, CC Docket No. 02-6 (filed June 24, 2009) (Falcon Request for Review). We also deny Falcon's appeal of USAC's classification of its schools as urban. See Falcon Request for Review at 4.

2 The requests for waiver and review are listed in the appendix.

3 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).

USAC found violations of the Commission's competitive bidding requirements.⁴ Based on our review of the record, we find that petitioners violated the Commission's competitive bidding requirements.⁵ In addition, we find that petitioners have not demonstrated that good cause exists to justify a waiver of the Commission's competitive bidding requirements.⁶

2. 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 listed in the appendix ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

⁴ See Appendix.

⁵ See *supra* n.1.

⁶ 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.

APPENDIX

Petitioner	Application Number(s)	Funding Year	Date Request for Review/Waiver Filed
Charlton County School System Folkston, GA	658765	2009	Nov. 17, 2010
	742443	2010	Nov. 17, 2010
Falcon School District 49 Falcon, CO	466641	2005	Nov. 19, 2010
	532406	2006	Nov. 19, 2010
	577449	2007	Nov. 19, 2010
	627866	2008	Jun. 24, 2009, Nov. 19, 2010
	662600	2009	Nov. 19, 2010
	717469	2010	Nov. 19, 2010
Lake Pend Oreille School District Bristol, PA	666055	2009	Nov. 12, 2010
	736611	2010	Nov. 12, 2010
Trillion Partners, Inc. Austin, TX (Bloomfield School District, Bloomfield, NM)	498690	2006	Dec. 13, 2010
	545994	2007	Dec. 13, 2010
	600085	2008	Dec. 13, 2010
	656519	2009	Feb. 2, 2011
	693027	2009	Dec. 13, 2010
	739004	2010	Dec. 13, 2010
Trillion Partners, Inc. Austin, TX (Charlton County School System, Folkston, GA)	658765	2009	Nov. 19, 2010
	742443	2010	Nov. 19, 2010
Trillion Partners, Inc. Austin, TX (Falcon School District 49 Falcon, CO)	466641	2005	Nov. 12, 2010
	532406	2006	Nov. 12, 2010
	577449	2007	Nov. 12, 2010
	627866	2008	Nov. 12, 2010
	662600	2009	Nov. 12, 2010
	717469	2010	Nov. 12, 2010
Trillion Partners, Inc. Austin, TX (Lake Pend Oreille School District, Bristol, PA)	666055	2009	Nov. 19, 2010
	736611	2010	Nov. 19, 2010
Trillion Partners, Inc. Austin, TX			Oct. 1, 2010
Trillion Partners, Inc. Austin, TX			Oct. 10, 2010
Trillion Partners, Inc. (Master Appeal)			Nov. 3, 2010