Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Petitions for Reconsideration by	)	
	)	
Callisburg Independent School District Callisburg, TX	))	File Nos. SLD-662878 et al.
	)	
Trillion Partners, Inc. Austin, TX	))	File Nos. SLD-662878 et al.
	)	
Schools and Libraries Universal Service Support Mechanism	))	CC Docket No. 02-6

ORDER AND ORDER ON RECONSIDERATION

Adopted: July 5, 2013 **Released: July 5, 2013**

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

1. Consistent with precedent,[1] we grant two petitions for reconsideration filed by Callisburg Independent School District (Callisburg) and Trillion Partners, Inc. (Trillion) (collectively, petitioners)[2] of that portion of the Wireline Competition Bureau's (Bureau) *Callisburg ISD Order* affirming the decision by the Universal Service Administrative Company (USAC) denying funding to Callisburg under the E-rate program (more formally known as the schools and libraries universal service support program) for funding years 2009 and 2010.[3] We also grant the requests for review filed by Callisburg and Trillion of USAC's decision denying E-rate funding to Callisburg for funding years 2011 and 2012.[4]

[1] *See, e.g.*, *Request for Review of a Decision of the Universal Service Administrator by Harbor Beach Community School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 13-1247 (Wireline Comp. Bur. rel. May 31, 2013). *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 (2003) (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

[2] Letter from Henry M. Rivera, Counsel to Trillion Partners, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 22, 2012) (Trillion Petition for Partial Reconsideration); Letter from Chris Webber, Consultant to Callisburg Independent School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 26, 2012) (Callisburg Petition for Reconsideration).

[3] *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Callisburg Independent School District; Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-446653, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 2005, 2009, App. B (Wireline Comp. Bur. 2012) (*Callisburg ISD Order*) (finding that the petitioners, Callisburg and Trillion, violated the Commission's competitive bidding requirements by engaging in improper communications, and failed to demonstrate good cause justifying a waiver of the Commission's competitive bidding requirements).

[4] Letter from Henry M. Rivera, Counsel to Trillion Partners, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 18, 2013) (Trillion Request for Review for 2011 and 2012); Letter from Chris Webber, Consultant to Callisburg Independent School District, to Marlene H. Dortch,
(continued...)

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for universal service support for eligible services.[5] E-rate program rules provide that these entities must seek competitive bids for services eligible for support.[6] 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.[7] The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.[8] After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.[9] The Commission's rules require applicants to carefully consider all submitted bids prior to entering into a contract, and that the price of eligible products and services must be the primary factor in selecting the winning bid.[10] 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.[11] USAC assigns an FRN to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.[12]

3. 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.[13] 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.[14] In addition, all

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Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 22, 2013) (Callisburg Request for Review).

[5] *See* 47 C.F.R. §§ 54.501-54.502 (2013). *See also* 47 C.F.R. §§ 54.501-54.503 (2009). In this Order and Order on Reconsideration, we describe the requirements of the E-rate program as they currently exist, but because we address applications from funding years 2009 through 2012, and the Commission has reorganized the E-rate rules in the interim, where the Commission's codification of the rules in the Code of Federal Regulations has changed, we also cite to the relevant rules as they existed during the relevant funding years.

[6] *See* 47 C.F.R. § 54.503 (2013). *See also* 47 C.F.R. § 54.504 (2009).

[7] *See* 47 C.F.R. § 54.503(c) (2013). *See also* 47 C.F.R. § 54.504(b) (2009).

[8] *Id*.

[9] *See id. See also, e.g., Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Centers et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510 (Wireline Comp. Bur. 2008).

[10] *See* 47 C.F.R. § 54.511(a) (2013). *See also* 47 C.F.R. § 54.511(a) (2009).

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

[12] *See* USAC, Schools and Libraries, Funding Commitment Decision Letter, *available at* http://www.universalservice.org/sl/applicants/step05/default.aspx (last visited June 25, 2013).

[13] *See supra* n.1. In the *Schools and Libraries Sixth Report and Order*, the Commission codified the longstanding requirement that the E-rate competitive bidding process be fair and open. *See Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18798-800, paras. 85-86 (2010) (*Schools and Libraries Sixth Report and Order*); 47 C.F.R. § 54.503.

[14] *See* 47 C.F.R § 54.503(a) (2013). *See also Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.; Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033, para. 10 (2000); *Request for Review of the Decision of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico et al.; Federal-State Joint Board on*
(continued...)

potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.[15]

4. In the *Callisburg ISD Order*, we found that the petitioners engaged in improper communications during Callisburg's competitive bidding process for funding year 2009, which violated the Commission's competitive bidding requirements, and that the petitioners did not demonstrate that good cause existed to justify a waiver of the Commission's competitive bidding requirements.[16] In the *Callisburg ISD Order*, we also denied Callisburg's request for review regarding its funding year 2010 application, because that application relied on its funding year 2009 competitive bidding process.[17] In their petitions for reconsideration, petitioners argue that Callisburg's competitive bidding process was open and fair, and that all bidders had access to the same information.[18]

5. Upon reconsideration of the record, we do not find that the evidence supports our previous determination that Callisburg violated the Commission's competitive bidding requirements for the E-rate program in funding year 2009.[19] Specifically, we find that some of the communications at issue occurred prior to the competitive bidding process for funding year 2009 and concern the petitioners' existing contract with Trillion, and were therefore appropriate and not indicative of an unfair competitive bidding process. The remainder of the communications at issue in the record occurred after Callisburg had concluded its competitive bidding process and selected Trillion to continue to be its service provider, and, as such, could not have affected the competitive bidding process.[20] We therefore grant Callisburg's and Trillion's petitions for reconsideration related to funding years 2009 and 2010, and remand the underlying applications to USAC for further action consistent with this order.[21]

6. For the same reasons discussed above, we also grant Callisburg's and Trillion's requests for review related to Callisburg's applications for funding years 2011 and 2012.[22] Callisburg's funding year 2011 and 2012 applications relied on the same competitive bidding process conducted for funding year 2009.[23] Thus, USAC, relying on our *Callisburg ISD Order*, denied Callisburg's funding year 2011 and

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Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45, 97-21, Order, 17 FCC Rcd 13624, 13626, paras. 6-8 (Wireline Comp. Bur. 2002) (finding that the applicant violated the competitive bidding rules when it listed an employee of a service provider selected to provided E-rate services as the contact for technical details and other information about E-rate supported services); *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Free Union School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 8630, 8636, para. 14 (Wireline Comp. Bur. 2011) (finding that "[a] person assisting in the preparation of a technology plan can influence the products and services that are requested" and "[w]hen an applicant allows an entity to formulate a technology plan and also participate in the competitive bidding process as a prospective service provider, the applicant impairs its ability to hold a fair and open competitive bidding process").

[15] *See Schools and Libraries Sixth Report and Order,* 25 FCC Rcd at 18799, para 86.

[16] *See Callisburg ISD Order*, 27 FCC Rcd at 2009, App. B.

[17] *See id.*

[18] *See* Callisburg Petition for Reconsideration at 1; Trillion Petition for Partial Reconsideration at 3-10.

[19] *See* 47 C.F.R. § 54.504 (2009).

[20] *See* Callisburg Petition for Reconsideration at 2; Trillion Petition for Partial Reconsideration at 6-8.

[21] *See* Appendix A.

[22] *See* Appendix B.

[23] *See* Trillion Request for Review for 2011 and 2012 at 3; Callisburg Request for Review at 1-2.

2012 applications.[24] Because we are now reversing our decision with respect to funding years 2009 and 2010, we also find it appropriate to grant Callisburg's and Trillion's requests for review for funding years 2011 and 2012.

7. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the underlying applications no later than 60 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 in the underlying applications. We therefore, on our own motion, waive section 54.507(d) of the Commission's rules for Callisburg's funding year 2009 through 2012 applications, and direct USAC to waive any procedural deadline, such as the invoicing deadline, that might be necessary to effectuate our ruling.[25] We find good cause to waive section 54.507(d) because filing an appeal of a denial is likely to cause the applicant to miss the program's subsequent procedural deadlines in that funding year.

8. 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, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.106, and 54.722(a), that the petitions for reconsideration and requests for review filed by Callisburg Independent School District and Trillion Partners, Inc., as listed in Appendices A and B, ARE GRANTED and the applications ARE REMANDED to USAC for further consideration in accordance with the terms of this Order and Order on Reconsideration.

9. 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 parties to the limited extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino
Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

[24] *See* Letter from USAC, Schools and Libraries Division, to Karla Hall or Chris Webber, Callisburg Independent School District, at 10 (dated Dec. 5, 2012) (regarding Callisburg Independent School District FY 2011 FCC Form 471 application number 787774, FRN 2131815) (stating that "[c]onsistent with FCC Order DA 12-259, the FCC has determined that your competitive bidding process was flawed due to improper service provider involvement in the competitive bidding process that [led] to this contract. Therefore, funding is denied."); Letter from USAC, Schools and Libraries Division, to Karla Hall or Chris Webber, Callisburg Independent School District, at 10 (dated Nov. 29, 2012) (regarding Callisburg Independent School District FY 2012 FCC Form 471 application number 828542, FRN 2251719) (denying Callisburg's funding requests for FY 2012).

[25] 47 C.F.R. § 54.507(d) (2013) (requiring non-recurring services to be implemented by September 30 following the close of the funding year).

APPENDIX A

Petitions for Reconsideration Granted

Petitioner	Application Numbers	Funding Years	Date Request for Review Filed
Callisburg Independent School District Callisburg, TX	662878 721400	2009 2010	Mar. 26, 2012 Mar. 26, 2012
Trillion Partners, Inc. Austin, TX (Callisburg Independent School District Callisburg, TX)	662878 721400	2009 2010	Mar. 22, 2012 Mar. 22, 2012

APPENDIX B

Requests for Review Granted

Petitioner	Application Numbers	Funding Years	Date Request for Review Filed
Callisburg Independent School District Callisburg, TX	787774 828542	2011 2012	Jan. 22, 2013 Jan. 22, 2013
Trillion Partners, Inc. Austin, TX (Callisburg Independent School District Callisburg, TX)	787774 828542	2011 2012	Jan. 18, 2013 Jan. 18, 2013