

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Petitions for Reconsideration by)	
)	
Charlton County School System)	File Nos. SLD-658765 et al.
Folkston, Georgia)	
)	
Trillion Partners, Inc.)	
Austin, TX)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER AND ORDER ON RECONSIDERATION

Adopted: July 8, 2013

Released: July 8, 2013

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

1. Consistent with precedent,¹ we deny two petitions for reconsideration filed by Charlton County School System (Charlton) and Trillion Partners, Inc. (Trillion)² (collectively, petitioners) of that

¹ See, e.g., *Petition for Reconsideration by Lake Pend Oreille School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, 28 FCC Rcd 1103, 1107, para. 5 (Wireline Comp. Bur. 2013) (finding that the service provider, Trillion, and the applicant engaged in numerous and substantive communications which provided Trillion with access to information not available to other bidders); *Requests for Review of Decisions of the Universal Service Administrator by Marana Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1525, 1529-1530, para. 8 (Wireline Comp. Bur. 2012) (*Marana Order*) (finding that the service provider, Trillion, engaged in routine and numerous contacts with the applicant by discussing all aspects of the applicant’s technology needs and request for proposal (RFP) in violation of the Commission’s competitive bidding rules, and assisted with the preparation of the applicant’s FCC Form 470 and RFP); *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, 8632, para. 3 (Wireline Comp. Bur. 2011) (*Central Islip Order*) (finding that “a service provider participating in the competitive bidding process cannot be involved in the preparation of the entity’s FCC Form 470”); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 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); *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) (*MasterMind Order*) (finding that an applicant impairs its ability to hold a fair competitive bidding process when it allows a service provider to provide assistance in the administration of the competitive bidding process and participate in the process as a bidder).

² Letter from Sandra Slater, Director of Technology, Charlton County School System, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 23, 2012) (Charlton Petition for Reconsideration); 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. 23, 2012) (Trillion Petition for Reconsideration).

portion of our *Charlton County Order* affirming the decision by the Universal Service Administrative Company (USAC) denying funding to Charlton under the E-rate program (more formally known as the schools and libraries universal service support program) for funding years 2009 and 2010.³ Also consistent with precedent,⁴ we deny the requests for review filed by Charlton and Trillion for funding year 2011⁵ and the request for review filed by Trillion for funding year 2012⁶ of USAC's decisions to deny E-rate funding to Charlton.

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.⁷ E-rate program rules provide that these entities must seek competitive bids for services eligible for support.⁸ 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.⁹ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.¹⁰ After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹¹

3. The Commission's rules require applicants to carefully consider all submitted bids prior to entering into a contract, and the price of eligible products and services must be the primary factor in selecting the winning bid.¹² 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

³ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Charlton County School System et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 2010, 2012, App. (Wireline Comp. Bur. 2012) (*Charlton County Order*) (finding that Charlton 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 *See supra* n.1.

⁵ Letter from Sandra Slater, Director of Technology, Charlton County School System, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Jan. 31, 2013) (Charlton Request for Review for Funding Year 2011); Letter from Edgar Class, 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 Funding Year 2011).

⁶ Letter from Edgar Class, Counsel to Trillion Partners, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 28, 2013) (Trillion Request for Review for Funding Year 2012).

⁷ *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.

⁸ *See* 47 C.F.R. § 54.503 (2013). *See also* 47 C.F.R. § 54.504 (2009).

⁹ *See* 47 C.F.R. § 54.503(c) (2013). *See also* 47 C.F.R. § 54.504(b) (2009).

¹⁰ *Id.*

¹¹ *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).

¹² *See* 47 C.F.R. § 54.511(a) (2013). *See also* 47 C.F.R. § 54.511(a) (2009).

¹³ *See supra* n.1. 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*

(continued...)

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 an associated RFP.¹⁴ 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.¹⁵

4. In denying Charlton's and Trillion's appeals in the *Charlton County Order*, we relied on the Commission's rules and precedent that prohibits service providers from assisting with the preparation of the applicant's FCC Form 470.¹⁶ We also relied on precedent that requires that all potential bidders have access to the same information and must be treated in the same manner throughout the procurement process.¹⁷

5. Here, the record shows that Charlton worked with Trillion on a proposal and pricing information for its project prior to beginning the competitive bidding process for funding year 2009.¹⁸ The record also shows that Charlton provided Trillion with its FCC Form 470 for funding year 2009 in advance and asked for Trillion's guidance.¹⁹ Thus, consistent with precedent, we correctly found in the *Charlton County Order* that Charlton violated the Commission's competitive bidding rules by providing Trillion with selective treatment in advance of Charlton's competitive bidding process and by seeking input from Trillion on the content of the applicant's FCC Form 470.²⁰ While Trillion argues that the *Charlton County Order* failed to provide a reasoned analysis,²¹ we find that our denial was fully supported by cited precedent which clearly prohibits the actions taken by the petitioners here.²²

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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, e.g., 47 C.F.R. § 54.503(a) (note) (2013); *Marana Order*, 27 FCC Rcd at 1532-33, paras. 12-13; *Central Islip Order*, 26 FCC Rcd at 8636, para. 14; *MasterMind Order*, 16 FCC Rcd at 4033, para. 10.

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

¹⁶ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1 n.1 (citing *MasterMind Order*, 16 FCC Rcd at 4033, para. 10, which found that a service provider participating in the competitive bidding process cannot be involved in the preparation of the entity's FCC Form 470).

¹⁷ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1. See also *supra* n.1.

¹⁸ We list a few of those communications here as examples. See, e.g., Email from Chuck Browning, Trillion Partners, Inc., to Sandy Slater, Charlton County School System (dated Oct. 28, 2008) (stating "I[t] was great seeing you last Wednesday. I wanted to thank you for taking the time to allow Kevin Bethke and me to present our upgrade proposal. We value Charlton CDS as an[] Education Partner and we look forward to working with you, your staff and the district for a long time to come."); Email from Sandy Slater, Charlton County School System, to Chuck Browning, Trillion Partners, Inc. (dated Oct. 28, 2008) ("Subject: Re: Charlton CSD Visit" stating "Chuck, Start working on the pricing, etc. for this project. I will submit my 470 today, thanks.").

¹⁹ See, e.g., Email from Sandy Slater, Charlton County School System, to Jennifer Carter, Trillion Partners, Inc. (dated Oct. 27, 2008) ("Subject: 470 E-rate" stating "Jennifer, Look this over and make sure I have this correct, thanks"); Email from Jennifer Carter, Trillion Partners, Inc., to Sandy Slater, Charlton County School System, (dated Oct. 27, 2008) ("Subject RE: 470 E-rate" stating "Looks fine, Sandy."). Charlton's funding years 2010 through 2012 applications relied on the same competitive bidding process conducted for funding year 2009. See Charlton Request for Review for Funding Year 2011 at 3; Trillion Request for Review for Funding Year 2012 at 4.

²⁰ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1.

²¹ See Trillion Petition for Reconsideration at 3-4.

²² See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1.

6. We therefore deny petitioners petitions for reconsideration on the merits. The petitioners agree that the E-rate competitive bidding process should be fair and open, and do not dispute that they had communications with each other.²³ Trillion admits that its receipt of an advance copy of Charlton's FCC Form 470 creates the appearance of impropriety.²⁴ However, Trillion claims that it did not gain any advantage by receiving Charlton's FCC Form 470 because the language used on the FCC Form 470 was from the Eligible Services List.²⁵ The petitioners also claim the other communications were limited to discussions regarding Charlton's existing contract with Trillion and Trillion's service offerings.²⁶ The record does not support the petitioners' characterization of the nature of their communications. Instead, the record demonstrates that Trillion provided Charlton with assistance in the preparation of Charlton's FCC Form 470 by reviewing and verifying the acceptability of Charlton's FCC Form 470 in advance of Charlton submitting it to USAC.²⁷ Further, the record demonstrates that the petitioners met to discuss Trillion's proposal for Charlton prior to Charlton's competitive bidding process.²⁸ The communications were between Trillion, as a prospective bidder, and the contact person listed on Charlton's FCC Form 470 who had influence in Charlton's competitive bidding process.²⁹ Therefore, we find that Charlton and Trillion violated the Commission's rules and precedent by allowing Trillion to assist in the preparation of the applicant's FCC Form 470.³⁰ We also find that Charlton violated the Commission's rules and precedent by providing Trillion's proposal with special treatment.³¹ Finally, the petitioners fail to present any special circumstances that would justify a waiver of the Commission's rules.³² We therefore affirm our *Charlton County Order*, and deny the petitions for reconsideration from Charlton and Trillion.

7. For the same reasons discussed above, we also deny Charlton's and Trillion's requests for review related to Charlton's application for funding year 2011, as well as Trillion's request for review related to Charlton's application for funding year 2012.³³ Charlton's funding year 2011 and 2012 applications relied on the same competitive bidding process conducted for funding year 2009.³⁴ Thus, USAC, relying on our *Charlton County Order*, denied Charlton's funding year 2011 and 2012

²³ See Charlton Petition for Reconsideration at 2; Trillion Petition for Reconsideration at 6.

²⁴ See Trillion Request for Review for Funding Year 2012 at 8.

²⁵ *Id.*

²⁶ See Trillion Petition for Reconsideration at 7.

²⁷ See *supra* n.19; Charlton Request for Review for Funding Year 2011 at 4. See also *Marana Order*, 27 FCC Rcd at 1531, para. 11 (finding that the applicant and Trillion violated the Commission's competitive bidding rules when Trillion assisted Marana in reviewing and revising Marana's FCC Form 470 and RFP).

²⁸ See *supra* n.18.

²⁹ See FCC Form 470 Charlton County School System (posted Oct. 29, 2008) (listing "Dr. Sandy Slater" as Charlton's contact person).

³⁰ See *supra* n.1.

³¹ See *supra* para. 3.

³² 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. *Northeast Cellular*, 897 F.2d at 1166.

³³ See Appendix B.

³⁴ See, e.g., Trillion Request for Review for Funding Year 2012 at 4.

applications.³⁵ Because we are now upholding our decision with respect to funding years 2009 and 2010, we also find it appropriate to deny Charlton's and Trillion's requests for review for funding year 2011 and Trillion's request for review for funding year 2012.

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 pursuant to the authority delegated in sections 0.91, 0.291, 1.3, 1.106, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106 and 54.722(a), that the petitions for reconsideration filed by Charlton County School System and Trillion Partners, Inc., as identified in Appendix A, ARE DENIED, and the requests for review filed by Charlton County School System and Trillion Partners, Inc., as identified in Appendix B, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

³⁵ See Letter from USAC, Schools and Libraries Division, to Sandy Slater, Charlton County School System (dated Dec. 5, 2012) (regarding Charlton County School System's FY 2011 FCC Form 471 application number 805658, FRNs 2203806, 2203827) (stating that "[c]onsistent with FCC Order DA 12-260, 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 Virginia Bryant, Trillion Partners, Inc. (dated Feb. 26, 2013) (regarding Charlton County School System's FY 2012 FCC Form 471 application number 850298, FRN 2311849).

APPENDIX A

Petitions for Reconsideration Denied

Petitioner	Application Numbers	Funding Years	Date Request for Review/Waiver Filed
Charlton County School System Folkston, GA	658765 742443	2009 2010	Mar. 23, 2012 Mar. 23, 2012
Trillion Partners, Inc. Austin, TX (Charlton County School System Folkston, GA)	658765 742443	2009 2010	Mar. 23, 2012 Mar. 23, 2012

APPENDIX B

Requests for Review Denied

Petitioner	Application Number(s)	Funding Year(s)	Date Request for Review/Waiver Filed
Charlton County School System Folkston, GA	805658	2011	Jan. 31, 2013
Trillion Partners, Inc. Austin, TX (Charlton County School System Folkston, GA)	805658 850298	2011 2012	Jan. 18, 2013 Mar. 28, 2013