

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Petitions for Reconsideration by)
)
Bloomfield Public School District) File Nos. SLD-498690 et al.
Bloomfield, NM)
)
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 a petition for reconsideration filed by Trillion Partners, Inc. (Trillion)² and dismiss as untimely a petition for reconsideration filed by Bloomfield Public School

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, 1529-30, 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 in violation of the Commission’s competitive bidding rules, and assisted with the preparation of the applicant’s FCC Form 470 and request for proposal); 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); Warren C. Havens, Applications to Provide Automated Maritime Telecommunications System Stations at Various Locations in Texas, and Applications to Provide Automated Maritime Telecommunications System Stations at Chaffee, Aspen, Colorado Springs, Copper Mountain, and Leadville, Colorado, Memorandum Opinion and Order, 23 FCC Rcd 3210, 3212, para. 7 (2008) (Warren C. Havens Order) (finding that Commission rules require petitions for reconsideration to be filed within thirty days from the release of the Commission’s action and that this rule will only be waived if there are extremely unusual circumstances).

District (Bloomfield)³ (collectively, petitioners) of that portion of our *Charlton County Order* affirming the decision by the Universal Service Administrative Company (USAC).⁴ USAC denied funding to Bloomfield under the E-rate program (more formally known as the schools and libraries universal service support program) for funding years 2006 through 2010.⁵ Also consistent with precedent,⁶ we deny the requests for review filed by Bloomfield and Trillion of USAC's decision denying E-rate funding to Bloomfield for funding year 2011.⁷

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.⁸ E-rate program rules provide that these entities must seek competitive bids for services eligible for support.⁹ 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.¹⁰ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.¹¹ After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹²

3. 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.¹³ The competitive bidding process must be fair and open, and must not have

(Continued from previous page)_____

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. 24, 2012) (Trillion Petition for Reconsideration).

³ See Letter from John F. Kennedy, Counsel, Bloomfield Public School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6, at 8 (filed Mar. 29, 2012) (Bloomfield Petition for Reconsideration).

⁴ *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 Bloomfield 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).

⁵ See *id.*

⁶ See *supra* n.1.

⁷ 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); Letter from John F. Kennedy, Counsel, Bloomfield Public School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Feb. 4, 2013) (Bloomfield Request for Review).

⁸ See 47 C.F.R. §§ 54.501-54.502 (2013). See also 47 C.F.R. §§ 54.501-54.503 (2006). 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 2006 through 2011, 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.

⁹ See 47 C.F.R. § 54.503 (2013). See also 47 C.F.R. § 54.504 (2006).

¹⁰ See 47 C.F.R. § 54.503(c) (2013). See also 47 C.F.R. § 54.504 (b) (2006).

¹¹ See *id.*

¹² 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).

¹³ 47 C.F.R. § 54.511(a) (2013). See also 47 C.F.R. § 54.511(a) (2006).

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 an associated request for proposals.¹⁵ In addition, all potential bidders must have access to the same information and must be treated in the same manner throughout the procurement process.¹⁶

4. *Dismissal.* We dismiss Bloomfield's petition for reconsideration as untimely. Section 1.106 (f) of the Commission's rules requires that a petition for reconsideration be filed within thirty days from the release of the Commission's action.¹⁷ The Commission has previously indicated that this deadline will only be waived if there are "extremely unusual circumstances."¹⁸ In this instance, Bloomfield filed its petition for reconsideration three days late, and asks for a waiver of the Commission's rules because it miscalculated the petition for reconsideration deadline date.¹⁹ We do not find that Bloomfield's justification constitutes extremely unusual circumstances and therefore, we decline to grant Bloomfield's request for a waiver of the Commission's rules.²⁰ We thus dismiss Bloomfield's petition for reconsideration.²¹

5. *Denial.* We also deny Trillion's petition for reconsideration on the merits. While Trillion argues that the *Charlton County Order* failed to provide a reasoned analysis,²² we find that our denial was fully supported by cited precedent which clearly prohibits the actions taken by the petitioners here.²³ 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 470.²⁴ We also relied on precedent that requires that all potential bidders have access to the same information, and that all service providers must be treated in the same manner, throughout the procurement process.²⁵

¹⁴ 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 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.

¹⁵ See, e.g., 47 C.F.R. § 54.503(a) (note); *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.

¹⁶ See *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18799, para. 86.

¹⁷ See 47 C.F.R. § 1.106(f) (2013).

¹⁸ See *Warren C. Havens Order*, 23 FCC Rcd at 3212, para. 7 (declining to waive the rules for a petitioner who missed the deadline by one day due to unforeseen technical problems).

¹⁹ See Bloomfield Petition for Reconsideration at 8.

²⁰ See 47 C.F.R. § 1.106(f) (2013). We note that Trillion timely filed its petition for reconsideration on behalf of Bloomfield and makes arguments similar to those found in Bloomfield's petition for reconsideration. Therefore, had Bloomfield's petition for reconsideration been filed timely, it would have been denied consistent with our decision above. See *infra* paras. 5-7; Trillion Petition for Reconsideration; Bloomfield Petition for Reconsideration.

²¹ See *supra* n.3. See also Appendix A.

²² See Trillion Petition for Reconsideration at 3-4.

²³ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1 n.1.

²⁴ See *id.* (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).

²⁵ See *Charlton County Order*, 27 FCC Rcd at 2010, para. 1. See also *supra* n. 1.

6. Here, the record shows that Bloomfield provided detailed information to Trillion about its needs and worked with Trillion on a proposal prior to beginning the competitive bidding process for funding year 2006.²⁶ The record also shows that Trillion provided Bloomfield guidance on the preparation of Bloomfield's FCC Form 470 application for funding year 2006.²⁷ Thus, consistent with precedent, we correctly found in the *Charlton County Order* that Bloomfield violated the Commission's competitive bidding rules by providing information to Trillion that was not available to other bidders and by allowing Trillion to assist in the preparation of the applicant's FCC Form 470.²⁸

7. In its petition for reconsideration, Trillion agrees that the E-rate competitive bidding process should be fair and open, and does not dispute that it had communications with Bloomfield.²⁹ Trillion instead claims the communications were neutral conversations about Bloomfield's technology needs and Trillion's service offerings.³⁰ Furthermore, Trillion admits to providing FCC Form 470 language suggestions, but argues that Bloomfield did not ultimately use their suggestions.³¹ We disagree with Trillion's characterization of the breadth and nature of the communications. Contrary to Trillion's assertions, the record shows that Trillion's FCC Form 470 language suggestions did appear on Bloomfield's FCC Form 470.³² Further, the record demonstrates that the petitioners discussed subjects

²⁶ There were communications from July through August of 2005 between Gary Gaessler from Trillion and Sondra Adams from Bloomfield, prior to Bloomfield's competitive bidding process. We list a few of those communications here as examples. *See, e.g.*, Email from Gary Gaessler, Trillion Partners, Inc., to Sondra Adams, Bloomfield Public School District (dated Jul. 19, 2005) ("RE: Trillion questions for updated proposal..."; stating "Been busy reviewing your previous proposals and have some questions for you when you call: 1) Confirm site locations on previous design 2) Looks like your Blanco ES has some terrain/distance challenges? I see we quoted a T1 connection. Lets discuss. 3) Is Rio Vista MS where you have fiber? Do you own this fiber? What is the distance? Would you be interested in Trillion managing this fiber under erate? 4) We have some new managed services: firewall, content filtering, email filtering, etc. would like to review and see what you currently have and issues."); Email from Sondra Adams, Bloomfield Public School District, to Gary Gaessler, Trillion Partners, Inc. (dated Aug. 28, 2005) (stating "I have not been able to file for the 470 with the start of the school and the worm that seemed to find us and has settled. I hope to be able to get with the erate consultant this week and get things settled. >Wanted to check status on your 470 filing? (Let me know if you need possible language to use) I would like any examples that you could give me. >2. Could you provide the handset count for Blanco? Blanco is approx. 50 stations >3. Would like to have a call to review your LAN network, i.e. switching equip, models, hubs, QOS capabilities etc. I would be glad to set that up. We will need to have our lead technician involved in that also. Let me know when it's a good time for you and I will get him involved. >Roger and I would like to meet for a design & confirmation meeting (and or a possible proposal presentation if ready) the week of 9/18, preferably Tuesday 9/20 with you and your Finance Director if your available? I am sure that I can get Randy involved on any day except Tuesdays.").

²⁷ *See, e.g.*, Email from Gary Gaessler, Trillion Partners, Inc. to Sondra Adams, Bloomfield Public School District (dated Aug. 30, 2005) (stating "Listed below is the 470 language we recommend: The description for the WAN can be the same for the Voice service as well. The 470 should just say: Description: Wide Area Network for data and voice; Quantity: District wide; This should work for both the WAN and the Voice service over the WAN. Make sure you list this as a multi-year agreement or an agreement with voluntary extensions. . . . let me know if and when there is a 470 we can review."). Bloomfield's funding years 2007 through 2010 applications relied on the same competitive bidding process conducted for funding year 2006. *See* Bloomfield Request for Review at 3.

²⁸ *See Charlton County Order*, 27 FCC Rcd at 2010, para. 1.

²⁹ Trillion Petition for Reconsideration at 5.

³⁰ *Id.* at 7.

³¹ *Id.* at 2-3.

³² *Compare* Email from Gary Gaessler, Trillion Partners, Inc. to Sondra Adams, Bloomfield Public School District (dated Aug. 30, 2005) (stating that "The 470 should just say: Description: Wide Area Network for data and voice; Quantity: District wide... Make sure you list this as a multi-year agreement or an agreement with voluntary extensions), *with* FCC Form 470 Bloomfield Public School District (posted Jan. 1, 2006) (describing in 8(c) Service (continued...)

that provided Trillion with information such as Bloomfield's technical requirements, infrastructure and challenges regarding specific school sites.³³ The petitioners also had discussions about what to include in Trillion's proposal for the district.³⁴ Moreover, the communications were between Trillion, as a potential service provider, and Bloomfield's FCC Form 470 contact person who had influence in Bloomfield's competitive bidding process.³⁵ There is no evidence in the record to indicate that the information was provided in a manner accessible to all potential bidders. Instead, the record shows that Bloomfield provided Trillion with access to information that was not provided to other bidders and that Trillion advised Bloomfield on its FCC Form 470 in violation of the Commission's competitive bidding requirements.³⁶ Finally, Trillion failed to present any special circumstances that would justify a waiver of the Commission's rules.³⁷ We therefore affirm our *Charlton County Order*, and deny Trillion's request for reconsideration.

8. *Requests for Review.* For the same reasons discussed above, we also deny Bloomfield's and Trillion's requests for review related to Bloomfield's application for funding year 2011.³⁸ Bloomfield's funding year 2011 application relied on the same competitive bidding process conducted for funding year 2006.³⁹ Thus, USAC, relying on our *Charlton County Order*, denied Bloomfield's funding year 2011 application.⁴⁰ Because we are now upholding our decision with respect to funding years 2006 through 2010, we also find it appropriate to deny Bloomfield's and Trillion's requests for review for funding year 2011.

9. 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, 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 petition for reconsideration filed by Bloomfield Public School District, as identified in Appendix A, IS DISMISSED.

(Continued from previous page)_____

or Function "Wireless LAN/WAN (Voice and Data); Quantity: District Wide" and checking the boxes in 7(b) for a "multi-year contract and/or a contract featuring voluntary extensions").

³³ See *supra* n.26.

³⁴ See *id.*

³⁵ See FCC Form 470 Bloomfield Public School District (posted Jan. 1, 2006) (listing "Sondra Adams" as Bloomfield's contact person).

³⁶ See *supra* n.26.

³⁷ 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.

³⁸ See Appendix C.

³⁹ See Trillion Request for Review at 4; Bloomfield Request for Review at 3.

⁴⁰ See Letter from USAC, Schools and Libraries Division, to Virginia Bryant, Trillion Partners, Inc. (dated Dec. 5, 2012) (regarding Bloomfield Public School District's FY 2011 FCC Form 471 application number 775450, funding request numbers (FRN) 2102447 and 2102470) (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.").

10. 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, 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 petition for reconsideration filed by Trillion Partners, Inc., as identified in Appendix B, IS DENIED, and the requests for review filed by Bloomfield Public School District and Trillion Partners, Inc., as identified in Appendix C, ARE DENIED.

11. 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, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.106, that USAC SHALL CONTINUE its recovery actions against Bloomfield Public School District and Trillion Partners, Inc., to the extent provided herein.⁴¹

FEDERAL COMMUNICATIONS COMMISSION

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

⁴¹ See Demand Payment Letter from USAC, Schools and Libraries Division, to Trillion Partners, Inc. (dated Feb. 28, 2012) (regarding funding year 2006 FCC Form 471 application number 498690, FRNs 1438436 and 1438482, seeking recovery for \$138,156.28 and \$13,838.33, respectively); Demand Payment Letter from USAC, Schools and Libraries Division, to Trillion Partners, Inc. (dated Feb. 28, 2012) (regarding funding year 2007 FCC Form 471 application number 545994, FRNs 1508051 and 1508056, seeking recovery for \$167,772.96 and \$12,630.56, respectively).

APPENDIX A

Petition for Reconsideration Dismissed

Petitioner	Application Numbers	Funding Years	Date Request for Review/Waiver Filed
Bloomfield Public School District Bloomfield, NM	498690	2006	Mar. 29, 2012
	545994	2007	Mar. 29, 2012
	600085	2008	Mar. 29, 2012
	656519	2009	Mar. 29, 2012
	693027	2009	Mar. 29, 2012
	739004	2010	Mar. 29, 2012

APPENDIX B

Petition for Reconsideration Denied

Petitioner	Application Numbers	Funding Years	Date Request for Review/Waiver Filed
Trillion Partners, Inc. Austin, TX (Bloomfield Public School District Bloomfield, NM)	498690	2006	Mar. 24, 2012
	545994	2007	Mar. 24, 2012
	600085	2008	Mar. 24, 2012
	656519	2009	Mar. 24, 2012
	693027	2009	Mar. 24, 2012
	739004	2010	Mar. 24, 2012

APPENDIX C

Requests for Review Denied

Petitioner	Application Number	Funding Year	Date Request for Review/Waiver Filed
Bloomfield Public School District Bloomfield, NM	775450	2011	Feb. 4, 2013
Trillion Partners, Inc. Austin, TX (Bloomfield Public School District Bloomfield, NM)	775450	2011	Jan. 18, 2013