

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Petitions for Reconsideration by)	
)	
Marana Unified School District)	File Nos. SLD-531607 et al.
Marana, AZ)	
)	
Trillion Partners, Inc.)	File No. SLD-611726
Austin, TX)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER ON RECONSIDERATION

Adopted: July 25, 2013

Released: July 25, 2013

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

1. Consistent with precedent,¹ we deny petitions for reconsideration filed by Marana Unified School District (Marana)² and its service provider, Trillion Partners, Inc. (Trillion),³ (collectively, petitioners). The petitions seek review of our *Marana Order*, which affirmed the decisions of the Universal Service Administrative Company (USAC) to rescind Marana’s funding commitments and seek

¹ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9076-80, paras. 570-80 (1997) (subsequent history omitted) (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *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) (*Schools and Libraries Third Report and Order*) (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); *Requests for Review of Decisions of the Universal Service Administrator by Approach Learning and Assessment Center et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15510, 15511, para. 4 (Wireline Comp. Bur. 2008) (stating that after submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers).

² Letter from Heather K. Gaines and Spencer A. Smith, Counsel to Marana Unified School District, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed Mar. 14, 2012) (Marana Petition for Reconsideration).

³ 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. 14, 2012) (Trillion Petition for Reconsideration).

recovery of funding already disbursed under the E-rate program (more formally known as the schools and libraries universal service support program) for funding years 2006 through 2010.⁴

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.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

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.¹⁰ Additionally, 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.¹¹ The Commission has determined that a service provider participating in the competitive bidding process may not be involved in the preparation of the entity's technology plan, FCC Form 470 or an associated request for proposal (RFP).¹² The Commission has also determined that all potential bidders must have access to the same information and must be treated in the same manner throughout the procurement process.¹³

4. In the *Marana Order*, we found that Marana violated the Commission's competitive bidding rules by providing information to Trillion that was not available to other bidders and by allowing

⁴ *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 (Wireline Comp. Bur. 2012) (*Marana Order*) (finding that the service provider, Trillion, assisted in the preparation of the applicant's technology plan and FCC Form 470 in violation of the Commission's competitive bidding rules). *See also infra* Appendix.

⁵ 47 C.F.R. §§ 54.501-54.502 (2006); *see also* 47 C.F.R. §§ 54.501-54.502 (2011). In this 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 2010, 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 47 C.F.R. § 54.504 (2006-2010); *see also* 47 C.F.R. § 54.503 (2011).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ 47 C.F.R. §§ 54.504, 54.511 (2006-2010); *see also* 47 C.F.R. §§ 54.503, 54.511 (2011).

¹¹ *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 (2011).

¹² *See, e.g., MasterMind Order*, 16 FCC Rcd at 4033, para. 10.

¹³ *See generally, e.g., MasterMind Order. See also Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18799, para. 86.

Trillion to assist in the preparation of Marana's technology plan and FCC Form 470.¹⁴ Specifically, we determined that Marana and Trillion engaged in numerous discussions regarding the applicant's technology needs and RFP.¹⁵ We thus concluded that Marana effectively selected Trillion as its service provider prior to posting its FCC Form 470 in violation of the Commission's fair and open competitive bidding rules.¹⁶ Accordingly, we denied Marana's and Trillion's appeals, relying on Commission precedent prohibiting service providers from assisting with the preparation of the applicant's FCC Form 470, technology plan, or RFP, as well as precedent requiring all potential bidders to have access to the same information and to be treated in the same manner throughout the procurement process.¹⁷ We also relied on Commission rules requiring applicants to wait 28 days from the date the FCC Form 470 is posted to select a service provider to provide the desired services.¹⁸

5. On reconsideration, the petitioners argue that Marana's competitive bidding process did not violate E-rate program rules and that the email communications between Marana and Trillion referenced in the *Marana Order* did not taint the competitive bidding process or give an unfair advantage to Trillion over other potential bidders.¹⁹ The petitioners claim that any possible advantage that Trillion could have gained as a result of the referenced email exchanges was neutralized by Marana's vigorous vendor selection process.²⁰ We disagree with the petitioners' characterization of the breadth and nature of the communications at issue. Contrary to the petitioners' assertions, the record shows that the petitioners had numerous discussions about what to include in Marana's technology plan, the FCC Form 470 and Trillion's bid response.²¹ There is no evidence in the record to indicate that the information given to Trillion by Marana was provided in a manner accessible to all potential bidders. Thus, we find that our decision in the *Marana Order* was supported by cited precedent which clearly prohibits the actions taken by the petitioners.²² Further, we find that the petitioners have failed to present any special circumstances that would justify a waiver of the Commission's rules.²³ We therefore affirm our decision in the *Marana Order* and deny the petitioners' requests for reconsideration.

¹⁴ See *Marana Order*, 27 FCC Rcd at 1529-30, para. 8.

¹⁵ *Id.* at 1530-34, paras. 10-15 nn.40-53.

¹⁶ *Id.* at 1530-32, paras. 10-11.

¹⁷ *Id.* at 1529-33, paras. 8-13 (citing *MasterMind Order*; *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939, para. 66; *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.*; *Federal-State Joint Board on Universal Service*; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407 (2003)).

¹⁸ *Marana Order*, 27 FCC Rcd at 1529-30, para. 8; 47 C.F.R. § 54.504 (2006-2010); see also 47 C.F.R. § 54.503 (2011).

¹⁹ See Trillion Petition for Reconsideration; Marana Petition for Reconsideration.

²⁰ *Id.*

²¹ See *Marana Order*, 27 FCC Rcd at 1530-33, paras. 10-12.

²² See generally *Marana Order*; *supra* n.1.

²³ 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.

6. 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 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106 and 54.722, that the petitions for reconsideration filed by Marana Unified School District and Trillion Partners, Inc., concerning the applications identified in the Appendix, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

APPENDIX

Petitioner	Funding Years	Application Numbers	Funding Request Numbers	Date of Appeals				
Marana Unified School District Marana, Arizona	2006	531607	1468437	Dec. 9, 2010 Mar. 28, 2011 Apr. 12, 2011				
			1468735					
			1468603					
			1469006					
	2007	569965	1573238					
			1587171					
			1587223					
			1587335					
	2008	611726	1731902					
			1731952					
			1731993					
			1732011					
	2009	661850	1867213					
			1867259					
			1867293					
			1867329					
	2010	743075	1907563					
			2006044					
			2006074					
			2006105					
Trillion Partners, Inc. Austin, TX	2006	531607	1468437	Nov. 3, 2010, Dec. 9, 2010				
			1468735					
			1468603					
			1469006					
	2007	569965	1573238		Nov. 3, 2010, Dec. 9, 2010			
			1587171					
			1587223					
			1587335					
	2008	611726	1731902			Nov. 3, 2010, Dec. 9, 2010, Apr. 29, 2011		
			1731952					
			1731993					
			1732011					
	2009	661850	1867213				Nov. 3, 2010, Dec. 9, 2010	
			1867259					
			1867293					
			1867329					
	2010	743075	1907563					Nov. 13, 2010, Dec. 9, 2010
			2006044					
			2006074					
			2006105					
			2006140					